

50 YEARS OF FUN!

Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

FAX (972) 450-7043

## **AGENDA**

### **REGULAR MEETING OF THE CITY COUNCIL**

**DECEMBER 9, 2003**

**7:30 P.M.**

**COUNCIL CHAMBERS**

**5300 BELT LINE ROAD**

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### **REGULAR SESSION**

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Item #R1 – Consideration of Old Business

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Item #R2 – Consent Agenda

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## CONSENT AGENDA

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#2a – Approval of the Minutes for the November 25, 2003 Council Meeting.

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Item #R3 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4939 Belt Line Road, on application from Potbelly Sandwich Works, represented by Ms. Kitty Carlson.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission will meet on Tuesday, December 9, 2003 at 7:00 p.m. at which time this case will be presented; afterward, the Commissioner's finding will be presented to Council.

Administrative Recommendation:

Administration recommends approval.

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Item #R4 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-246, Temporary Banner Signs; Section 62-1, Definitions, for Pizza Hut, located at 14841 Dallas Parkway, on application from Dave Fleming.

Attachments:

1. Staff Report
2. Memorandum from Lynn Chandler
3. Application
4. Plans

Administrative Recommendation:

Administration recommends denial.

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Item #R5 – Consideration of a Resolution approving a Change Order in an amount not to exceed \$193,550.00 to a previously approved contract with Abstract Construction Company for changes to Addison Circle Park.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Jim Duffy
3. Exhibits

Administrative Recommendation:

Administration recommends approval.

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Item #R6 – Consideration of a Resolution authorizing the City Manager to enter into a contract with Sprint Spectrum L.P., for installation of a WLAN Equipment, including WiFi services, at the Conference Centre, subject to final review and approval of the City Attorney's office.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

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Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into a contract in an amount not to exceed \$36,000.00 with AriaMedia, Inc. for professional services.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

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Item #R8 – Consideration of a Resolution awarding a bid in the amount of \$44,945.00, and authorizing the City Manager to enter into a contract with Johnson Industries for the purchase and installation of two (2) vehicle/equipment lifts for fleet services.



Attachments:

1. Council Agenda Item Overview
2. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

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Item #R9 – Consideration of a Resolution authorizing the City Manager to enter into an agreement in an amount not to exceed \$59,000.00 with RTKL for professional planning services to develop a strategic approach for the re-invigoration of Belt Line Road.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

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Item #R10 – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$230,000.00 plus up to \$150,000.00 matching funds with WaterTower Theatre for the fiscal year 2003-2004 subject to final review and approval of the City Attorney's office.

Attachments:

1. Council Agenda Item Overview
2. Funding Request
3. Resolution
4. Contract

Administrative Recommendation:

Administration recommends approval.

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Item #R11 – Consideration of a Resolution authorizing the City Manager to enter into an "Agreement for the Use of the Addison Theatre Centre" between the Town and the WaterTower Theatre from October 1, 2003 through September 30, 2004, subject to final review and approval of the City Attorney's office.

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Attachments:

1. Council Agenda Item Overview
2. Agreement
3. Exhibits
4. Resolution

Administrative Recommendation:

Administration recommends approval.

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Item #R12 – Consideration of a Resolution authorizing the City Manager to enter into a professional services agreement in an amount not to exceed \$31,000.00 with PBS&J to perform a Vulnerability Assessment of the Town's water system and to provide assessment of the Town's Emergency Response Plan.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

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Item #R13 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$2,536,979.50 with Site Concrete Inc. for the construction of the Spectrum Drive North/South Extension Project.

Attachments:

1. Council Agenda Item Overview
2. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

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Item #R14 – Consideration of a Resolution authorizing the City Manager to enter into a Supplemental Agreement in the amount of \$87,291.00 with HNTB for landscape architecture design and surveying services relating to the Arapaho Phase III multi-use trail pocket parks.

Attachments:

1. Council Agenda Item Overview
2. Agreement
3. Map

Administrative Recommendation:

Administration recommends approval.

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Item #R15 – Presentation of the Finance Department Quarterly Report for the Quarter and Year ending September 30, 2003.

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Item #R16 – Consideration of an Ordinance providing for the holding of a public hearing on a zoning matter by the City Council jointly with a public hearing required to be held by the Town Planning and Zoning Commission on December 11, 2003.

Attachments:

1. Memorandum from John Hill
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

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**EXECUTIVE SESSION**

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Item #ES1 - Closed (executive) session of the City Council, pursuant to Section 551.071 of the Texas Government Code to consult with its attorney to seek advice regarding certain pending litigation, to wit: Transcontinental Realty Investors, Inc., et al. v. The Town of Addison, Texas, et al., Civil Action No. 3:03-CV-2132L, US District Court, Northern District of Texas, Dallas Division.

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Item #ES2 - Closed (executive) session of the City Council, pursuant to Section 551.071 of the Texas Government Code to consult with its attorney to seek advice regarding certain pending litigation, to wit: La Taste Enterprises, *E. Allan Stockton and Mary Lois Buce* vs. The Town of Addison, Texas, et al., Cause No. DV98-02259-F, 116<sup>th</sup> District Court, Dallas County, Texas.

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Adjourn Meeting

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Posted 5:00 p.m.  
December 4, 2003  
Carmen Moran  
City Secretary

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**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS  
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

## OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

November 25, 2003  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Chow, Hirsch, Mallory, Niemann, Silver,  
Turner  
Absent: None

### Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Billy Clay (Police) and Jarred Schreker (Fire).

Ron Whitehead, City Manager, announced a joint meeting with the City Council and the Planning and Zoning Commission on Thursday, December 11, 2003; the Holiday Open House on Sunday, December 7, 2003 and the Service Appreciation Reception on Friday, December 12, 2003.

### Item #R2 – Consent Agenda

Item #2a was considered separately.

Item #2b – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$40,000.00 with Communities in Schools Dallas, Inc. for fiscal year 2003-2004, subject to a final review and approval of the City Attorney. (Approved) (R03-110)

Item #2c – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$5,000.00 with The Family Place, Inc. for fiscal year 2003-2004, subject to a final review and approval of the City Attorney. (Approved) (R03-111)

Item #2d – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$15,000.00 with Metrocrest Social Service Center for fiscal year 2003-2004, subject to final review and approval of the City Attorney. (Approved) (R03-112)

Item #2e – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$6,600.00 with the Dance Council for fiscal year 2003-2004, subject to a final review and approval of the City Attorney. (Approved) (R03-113)

Item #2f – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$5,000.00 with the Repertory Company Theatre for fiscal year 2003-2004, subject to a final review and approval of the City Attorney. (Approved) (R03-114)

Item #2g – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$15,000.00 with Senior Adult Services for fiscal year 2003-2004, subject to a final review and approval of the City Attorney. (Approved) (R03-115)

Item #2h – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$5,000.00 with Honoring Other Peoples Everywhere (H.O.P.E.) for fiscal year 2003-2004, subject to a final review and approval of the City Attorney. (Approved) (R03-116)

Item #2i – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$8,500.00 with Brookhaven College Center for the Arts for fiscal year 2003-2004, subject to the final review and approval of the City Attorney. (Approved) (R03-117)

Item #2j – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$2,500.00 with DFW International for fiscal year 2003-2004, subject to final review and approval of the City Attorney. (Approved) (R03-118)

Councilmember Silver moved to duly approve the above items. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #2a – Approval of the Minutes for the November 11, 2003 Council meeting.

Councilmember Mallory made a correction to the Minutes of the November 11, 2003 Council meeting to indicate a correction to Item #R7 to indicate a motion made by Councilmember Silver.

Councilmember Mallory moved to duly approve the Minutes of the November 11, 2003 Council meeting, subject to corrections to Item #R7. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R3 – Consideration of approval of a final plat for one lot of .924 acres, located at 4300 Beltway Drive, on application from Advantage-Compass Addition, Richard and Pam Davis, represented by Mr. David B. Reaves of Grant Engineering.

Councilmember Mallory moved to duly approve a final plat for one lot of .924 acres, located at 4300 Beltway Drive, on application from Advantage-Compass Addition, subject to the following conditions:

1. Individual legal descriptions should be provided for Lot 2, Beltway Office Park in Addison, and Lot 1, Block A, Beltwood Business Park in Farmers Branch, on page 1 of 2.
2. South line of Lot 2, within the Town of Addison should be clearly marked with bearing and distance on page 2 of 2 on the plat.
3. Page 2 of 2 should be changed to page 1 of 2 (this has been corrected).
4. The northeast corner of Lot 1, Block A shows a “square” that is not marked or described. This must be addressed or removed.
5. Legal description on current page 1 of 2 is not necessary with the plat on current page 2 of 2.
6. Site/Civil drawings must be prepared and approved by the Town in advance of any construction improvements on-site and off-site. Any revisions to the existing water, sewer, drainage and paving infrastructure may require new utility or access easements.
7. Joint approval of all Site/Civil drawings by Farmers Branch is required.

Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R4 – Consideration of a Resolution approving and authorizing the City Manager to enter into an agreement entitled Third Amendment to Master Facilities Agreement regarding the design, construction and funding of certain public improvements, including the expenditure of public funds, on certain property improvements, including the expenditure of public funds, on certain property located within that area of the Town known as Addison Circle.

Councilmember Mallory moved to duly pass Resolution No. R03-119 approving and authorizing the City Manager to enter into an agreement entitled Third Amendment to Master Facilities Agreement regarding the design, construction and funding of certain public improvements, including the expenditure of public funds, on certain property improvements, including the expenditure of public funds, on certain property located within that area of the Town known as Addison Circle, subject to the approval of the City Attorney. Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Councilmember Niemann recused himself and left Council chambers.

Item #R5 – Consideration of adoption of an Ordinance of the Town of Addison, Texas granting to TXU Gas Distribution, a division of TXU Gas Company, a Texas corporation, its successors and assigns, as permitted herein, a franchise to construct, maintain, and operate pipelines and equipment in the Town of Addison, Dallas County, Texas for the transporting, delivery, sale, and distribution of natural gas in, out of, and through said city for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-ways; providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; repealing all previous gas franchise ordinances; provided other terms and conditions in connection with the provision of natural gas; providing a severability clause; providing an effective date.

Councilmember Mallory moved to duly pass Ordinance No. 003-041 granting to TXU Gas Distribution, a division of TXU Gas Company, a Texas corporation, its successors and assigns, as permitted herein, a franchise to construct, maintain, and operate pipelines and equipment in the Town of Addison, Dallas County, Texas for the transporting, delivery, sale, and distribution of natural gas in, out of, and through said city for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-ways; providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; repealing all previous gas franchise ordinances; provided other terms and conditions in connection with the provision of natural gas; providing a severability clause; providing an effective date. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Silver, Turner  
Voting Nay: None  
Absent: None  
Abstaining: Niemann

Councilmember Niemann returned to the Council chambers.

Item #R6 – Consideration of a Resolution authorizing the City Manager to enter into contracts in the amount of \$1,753,567.68 with Blue Cross/Blue Shield and Delta Dental for employee medical and dental insurance for the year 2004.

Councilmember Chow moved to duly pass Resolution No. R03-120 authorizing the City Manager to enter into contracts in the amount of \$1,753,567.68 with Blue Cross/Blue Shield and Delta Dental for employee medical and dental insurance for the year 2004. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into contracts in the amount of \$117,838.60 with Hartford Life Insurance Company and UnumProvident for life, accidental death and dismemberment insurance and long term disability insurance for the year 2004.



Councilmember Mallory moved to duly pass Resolution No. R03-121 authorizing the City Manager to enter into contracts in the amount of \$117,838.60 with Hartford Life Insurance Company and UnumProvident for life, accidental death and dismemberment insurance and long term disability insurance for the year 2004. Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

Item #R8 – Consideration of a Resolution approving an amendment to Professional Services Agreement in an amount not to exceed \$49,470.00 with URS Corporation for the design of the Arapaho Road Bridge at Midway Road.

Councilmember Mallory moved to duly pass Resolution No. R03-122 approving an amendment to Professional Services Agreement in an amount not to exceed \$49,470.00 with URS Corporation for the design of the Arapaho Road Bridge at Midway Road. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

Item #R9 – Consideration of a Resolution authorizing the City Manager to award incentive compensation to Washington Staubach Addison Airport Venture for fiscal year 2002-2003.

Councilmember Turner moved to duly pass Resolution No. R03-123 authorizing the City Manager to award incentive compensation in the amount of \$176,612.00 to Washington Staubach Addison Airport Venture for fiscal year 2002-2003. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

There being no further business before the Council, the meeting was adjourned.

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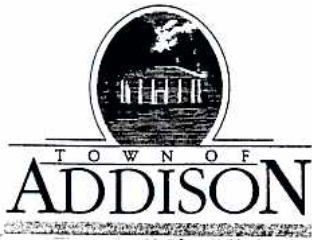
Mayor

Attest:

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City Secretary





#R3-2  
*Addison 50!*

50 YEARS OF FUN!

Post Office Box 9010    Addison, Texas 75001-9010    5300 Belt Line Road    (972) 450-7000  
FAX (972) 450-7043

November 14, 2003

STAFF REPORT

RE: Case 1441-SUP/Potbelly Sandwich Works

LOCATION: 4941 Belt Line Road

REQUEST: Approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only

APPLICANT: Potbelly Sandwich Works, represented by Ms. Kitty Carlson

DISCUSSION:

Background. This building is zoned LR (Local Retail) and was formerly occupied by The Container Store. At this point, Beltway Commercial Real Estate wants to redevelop the former Container Store building. Beltway has not been able to find a tenant to take the whole building, so it is planning to demolish the northern third of the building and then subdivide it into more typical "shallow bay" retail spaces.

Beltway recently replatted the lots to add more parking into the Container Store lot so that it would have the parking capacity for some restaurant space. Potbelly Sandwich Works, a restaurant, is the first tenant for the newly remodeled building.

Potbelly Sandwich Shops is a new concept to this area. There is a store currently under construction at Knox and Central Expressway, which should be open in the spring. The company is out of Chicago and has stores in the Midwest and some in eastern states.

Proposed Plan. The plans indicate a sandwich shop of 2,471 square feet. The restaurant will operate as a "deli-style" sandwich shop with pick up service for food



ordered at a counter (similar to Jason's Deli). The applicant does not plan to have a patio area. Although the restaurant will serve beer and wine, there is not a separate bar area.

Facades. The applicant will be making some modifications to the façade of the building. Potbelly will be adding a cornice to the top of the space, brick columns with banks of divided light windows, and awnings above the windows.

Parking. This building will qualify as a mixed-use center; however, it is under 30,000 square feet total, so all restaurant uses in this new center must park at a ratio of one space per 70 square feet. The restaurant will require 25 spaces. As noted above, the site has been replatted to provide additional parking. There is sufficient parking for this use. As the site plan indicates, the parking immediately east of the building belongs to Champ's Restaurant, and not to Potbelly. However, there is sufficient parking on site for this use.

Landscaping. The staff has examined the site, and it recommends that all dead or missing landscaping be replaced according to the plan approved for the Container Store. A freeze and rain sensor will need to be added to the irrigation controller if it has not already been installed.

Signs. The applicant has shown signs on the facades. However, it should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process. In addition, Addison has a policy against the use of the term "bar", "tavern", or any equivalent terms in exterior signs.

Dumpsters. There is a dumpster on the site; however, the property owner might need to re-size the dumpster to provide for multiple tenants. Both the owner and the applicant should be aware that all dumpsters, including those for recycling, must be screened.

Food Service Code. The applicant should be aware that the restaurant must comply with all the requirements of the Food Service Code, including the installation of a grease trap.

#### RECOMMENDATION:

The staff recommends approval of this request for a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

-All dead and missing landscaping on the site shall be replaced according to the plan approved for the Container Store. A freeze and rain sensor shall be added to the irrigation controller, if it has not already been installed. The Parks Department will do a final landscape and irrigation inspection before the Certificate of Occupancy is released.

-The term "bar", "tavern", or any equivalent terms, or graphic depictions associated with alcoholic beverages shall not be used in exterior signs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C MORAN". The "C" is large and stylized, with the "MORAN" written in a more standard, slightly slanted font.

Carmen Moran  
Director of Development Services

## **Memorandum**

DATE: November 12, 2003  
TO: Carmen Moran, Director of Development  
FROM: Slade Strickland, Director of Parks & Recreation  
SUBJECT: Case 1441 – Sup/Potbelly Sandwich Works

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We recommend that all dead or missing landscaping be replaced according to the plan approved for the Container Store. A freeze and rain sensor will need to be added to the irrigation controller if they are not already installed. The parks department will do a final landscape and irrigation inspection before the Certificate of Occupancy is released.

**ITEM #R3-3  
IS NOT  
AVAILABLE  
ELECTRONICALLY**



MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE  
STAFF REPORT

ME 2003-10

Business: Pizza Hut

Date: December 1, 2003

Location of Request: 14841 Dallas Parkway

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>
<p>Sec. 62-246. Temporary banner signs; prohibited, exceptions.</p> <p>Temporary banner signs are prohibited in all zoning districts in the town except for the following:</p> <p>(1) Any premises or nonresidential occupancy may display one banner announcing a grand opening of a new business. Display of such sign is limited to a maximum of 60 days per opening. The privilege to begin display of such sign expires six months after the issuance of a certificate of occupancy. Use of grand opening signs only apply to new ownership. Size of banner is limited to 50 square feet with at least one-half of all readable copy stating "Grand Opening" or "Now Open".</p> <p>(2) Any premises or any nonresidential occupancy may display banner signs containing a message directly relating a special event provided, however, that such banners may be displayed no more than 14 days prior to a special event and must be removed within two days after the conclusion of the special event.</p> <p>Sec. 62-1 Definitions.</p> <p>Special event means events which are sponsored in whole or in part by the town and include only: Kaboom Town, Oktoberfest, and other events as designated by the city council.</p>	<p>The applicant is requesting:</p> <p>Two promotional banners placed side by side on the east façade of the building. Each banner will have an area of 784 Sq. Ft. making the total effective area of the signage 1568 Sq. Ft.</p>	<p>The ordinance only allows banners for grand openings and city sponsored special events. There is only one banner of each type allowed and they can not exceed 50 Sq. Ft. in area.</p>

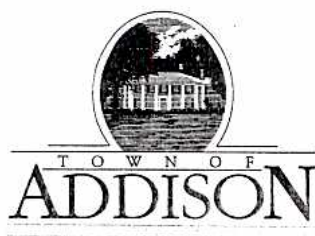
STAFF RECOMMENDATION: Staff recommends denial.

STAFF:

*Lynn Chandler*  
Lynn Chandler, Building Official

#R4-1





**BUILDING INSPECTION DEPARTMENT**

(972) 450-2880 FAX (972) 450-2837

**50 YEARS OF FUN!**

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

#R4-2

Addison 50!

To: Carmen Moran, Director Development Services

From: *Lec* Lynn Chandler, Building Official

Date: December 1, 2003

Subject: Exception to the Sign Ordinance

Pizza Hut has made requests for exceptions to the sign ordinance as follows:

(1) Sep. 1995. Pizza Hut was granted an exception for two 80" letters in the sign on the east façade and an exception for two 40- foot flagpoles along Dallas Parkway. The ordinance only allowed one letter to be up to 75" in height and flagpoles a maximum of 30 feet in height. They also requested a temporary banner 252 Sq. Ft. in area and three corporate flags but were denied. The ordinance only allowed a banner 50 Sq. Ft. in area and only allowed national or state flags.

(2) Aug. 1999. Pizza Hut was granted an exception for a sign on the east façade with a logo 90" in height and a letter 65" in height. The ordinance only allowed a logo 75" in height and a letter 48" in height. They were also granted an exception for a sign on the north façade with a logo 78" in height. The ordinance only allowed a logo 75" in height.

# Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

## Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: 11/26/03 Filing Fee: \$200.00

Applicant: Dave Fleming / Pizza Hut

Address: 14841 Dallas Pkwy Suite#: \_\_\_\_\_

Dallas TX 75254 Phone#: 972-338-6914  
City State Zip

Fax#: \_\_\_\_\_

Status of Applicant: Owner \_\_\_\_\_ Tenant \_\_\_\_\_ Agent \_\_\_\_\_

Location where exception is requested:

Please see attached

Reasons for Meritorious Exception:

• Provide a unique marketing vehicle to the Pizza Hut pizza product launch.

• These ~~banners~~, which will be such that employees can see through them, will add to the look of our building much like Christmas decorations do at the holidays.

• Timing: Jan 12<sup>th</sup> - Feb 5<sup>th</sup>

YOU MUST SUBMIT THE FOLLOWING:

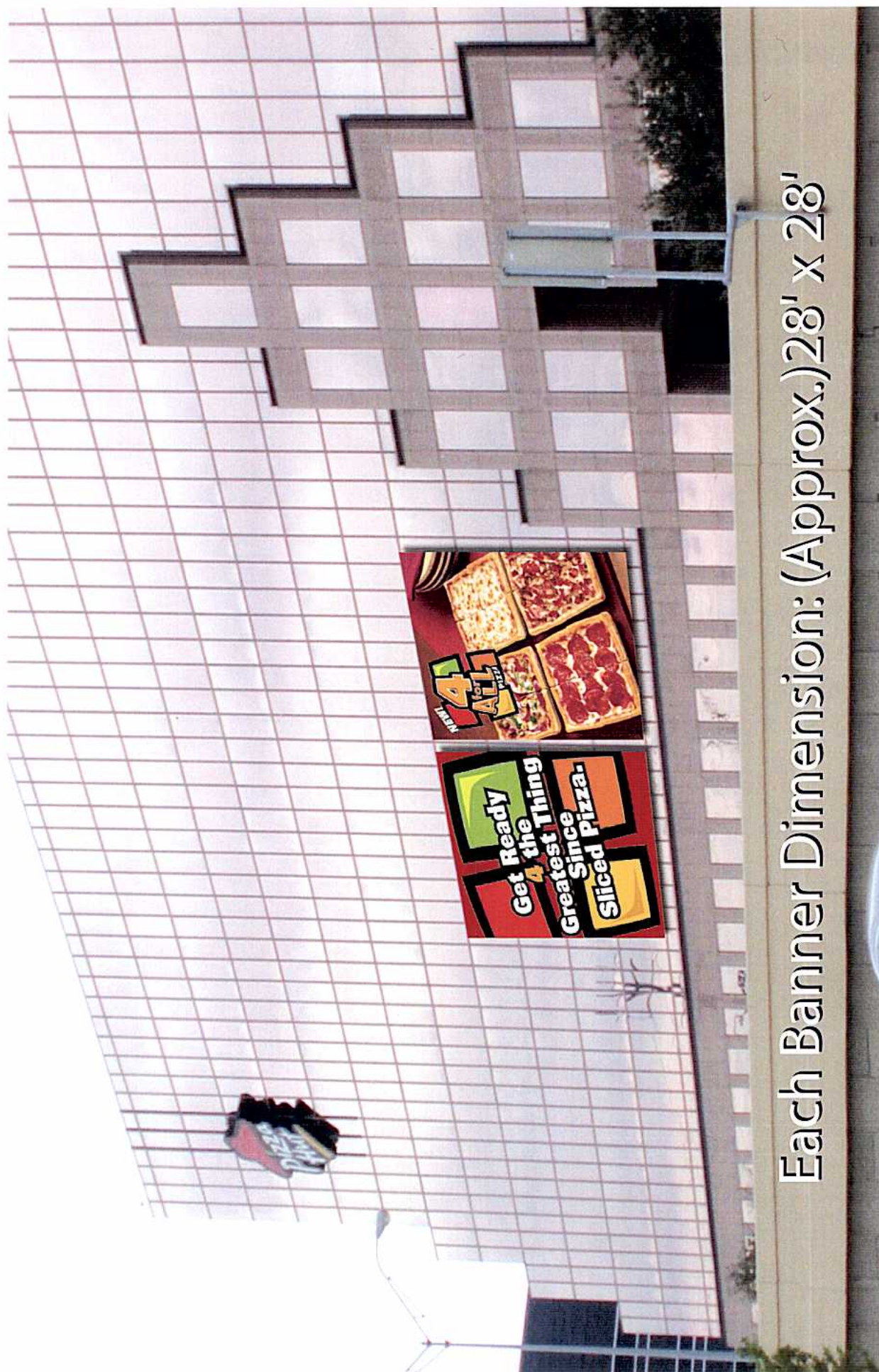
12 COPIES OF THE PROPOSED SIGN SHOWING:

1. Lot Lines
2. Names of Adjacent Streets
3. Location of Existing Buildings
4. Existing Signs

5. Proposed Signs
6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE)

Date Fees Paid 12-1-03 Check # cash Receipt # 16110





Each Banner Dimension: (Approx.) 28' x 28'





NORTH ELEVATION

14841 DALLAS NORTH PARKWAY  
ADDISON, TX 75240

OWNER: THE CRESCENT  
200 CRESCENT COURT, #550  
DALLAS, TX 75201

APPLICATION FOR MERITORIOUS EXCEPTION  
TOWN OF ADDISON SIGN ORDINANCE.

DALLAS NORTH PARKWAY  
(TOLLWAY SERVICE RD.)

PROP. LINE

*Proposed  
Temporary  
Sign*

EAST ELEVATION  
BLDG. MOUNTED  
SIGN

QUORUM DRIVE

ONE WAY

NOTE: PRESENTLY, NO EXISTING  
SIGNS, THIS LOT.

NORTH



SITE PLAN

1" = 80'

**Council Agenda Item: #R5****SUMMARY:**

Staff is requesting approval of a Resolution approving a change order in an amount not to exceed \$193,550 to a previously approved contract with Abstract Construction Company for changes to Addison Circle Park.

**FINANCIAL IMPACT:**

Budgeted Amount:	\$6,000,000
Original contract:	\$5,088,755
Previous/Pending change orders:	\$627,974
New contract amount:	\$5,716,729
Proposed change order:	\$193,550
Contract amount with change:	\$5,910,279
Funds remaining in budget:	\$89,721

**BACKGROUND:**

During our planning sessions for Addison Circle Park we discussed the possibility that we might have to come back and do some "fine tuning" on some of the elements in the Park. After holding Oktoberfest on the site, we have realized that some parts of the Park don't work as well as we would like.

Our Plaza Fountain Pool (Item #1 in Jim Duffy's letter, \$63,490) did not come out as we envisioned. We had a problem with water running down the hill and draining into it. While we think we have resolved most of the drainage problems around the pool, we find that the slopes down into it are too steep and the sandblasted concrete doesn't look as good as we had hoped. Dave Clough and Alan Ward at Sasaki Associates were also not pleased with the way it turned out, and they have not charged us for any of the work to redesign it. However, we will still have to pay the construction costs.

The Garden Areas west of the Pavilion (Item #2, \$5,918) did not work as well as we would like for events. We would like to increase the useable area inside the gardens, and we are proposing moving the Crape Myrtles to the edges of the gardens and installing turf in the middle of the squares. This would make it easier to set up a tent in the gardens and would allow us to have more set-up space for events, while still preserving the smaller garden ambiance.

The slope between the northeast corner of the Pavilion patio and the sidewalk looked good in plan view, but once constructed, we found it was uncomfortably steep. We had a wooden railing built in time for Oktoberfest that is still in place. We have designed a retaining wall (Item #3, \$25,341) to level out the slope. However, we also felt that a



black metal railing (Item #4, \$5,150), built like the rails on each side of the handicapped ramp, would accomplish the same purpose, and might even work better than a retaining wall. We like the separation that a railing provides from the activity on the sidewalk. The railing would be \$20,191 cheaper than the retaining wall, but we wanted the Council to see all the options that are available.

We got complaints about our main stage at Oktoberfest. Many of our guests did not like the stage so far from the dancefloor, and we felt we would get the same complaints at Taste Addison, so we decided to make the change now. The new plan for the stage (Item #5, \$18,822) adds a second retaining wall ten feet from the edge of the stage. We would then have a flat area ten feet from the edge of the stage that we could put a dance floor on. We feel the stage will also work better for our entertainers at Taste Addison and other events.

We also got complaints about our ticket kiosks (Item #6, \$19,177) from both our workers and customers. Both groups felt the window on the front was too high and did not allow the workers to see out or the customers to see in. We also got complaints about it being hard to hear through the vents we had in the glass. We are proposing putting a bigger window in the front of the kiosk and installing a double-hung window on the sides of the kiosks. In addition, we thought the color was not festive enough. We wanted to go with a neutral color so it would not compete with the other colors in the park, but when the kiosks arrived, they looked too military. We have not selected another color, but are considering red or black.

We have also found that people are using the park in ways we didn't expect. Skateboard riders and rollerbladers are "grinding" our handrails. "Grinding" a rail means that the skateboarder or skater jumps up on top of the rail and slides down it on his board or skates. They have scraped paint off of several of our rails, and we are concerned about the stability of the rails as they are subjected to the constant weight of skaters jumping on them at an angle. The skaters are also "catching air" off of the south edge of the pavilion, over our rose beds. We could post the park for "No Skating," but we don't want to deprive everyone of the ability to skate because of the actions of a few. Our architects have recommended a couple of deterrents (Item #7, \$4,879) to make the park less attractive to skaters. They recommend installing bolt heads to the tops of our sloped railings at a spacing of about one foot. The bolts would be tack welded into the top of the rail and would look like a button on top of it. They would stop someone trying to slide down the rail on skates, but would not interfere with someone trying to use the handrail as it is intended. The other item is a strong piece of edging to be placed against the south edge of the pavilion patio. The edging would stop someone from being able to launch off the edge of the patio, but would not be obtrusive.

Items #8 and #9 are the overhead and administrative costs for making the changes we have suggested.

#### **RECOMMENDATION:**

Staff recommends the Council approve a Resolution approving a change order, in an amount not to exceed \$193,550, to a previously approved contract with Abstract Construction Company for changes to Addison Circle Park.

## JAMES F. DUFFY

December 4, 2003

Ms. Carmen Moran  
Director of Development Services  
Town of Addison  
P.O. Box 9010  
Addison, TX 75001-9010

Re: Addison Arts & Events District  
Proposed Extra Work Items

Dear Ms. Moran:

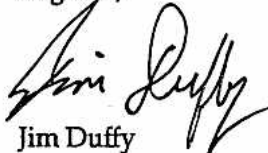
This letter summarizes a number of proposed changes to Addison Circle Park for the City Council's review. Any accepted changes will require a change order to Abstract Construction's contract, including the appropriate time extension. Below is a description of the proposed changes along with their cost.

<u>Description</u>	<u>Amount</u>
1. Redesign of the Plaza Fountain pool edge along the sidewalk	\$63,490
2. Revise the Garden Area plan west of the Pavilion Building	\$ 5,918
3. Add a Milsap stone wall north of the Pavilion Building	\$25,341
4. Install pipe handrail north of Pavilion Building	\$ 5,150
5. Build low wall and re-grade in front of Main Stage for dance floor	\$18,822
6. Modify ticket kiosks to increase visibility	\$19,177
7. Add deterrents to skaters at Pavilion perimeter and railings	\$ 4,879
8. Eight weeks extended overhead to Abstract Construction	\$44,773
9. Increase James F. Duffy not to exceed contract for extra work	\$ 6,000

I have attached descriptive information on most of the above changes and will be happy to respond to any questions regarding scope for these items. The above are submitted and each item is available independently or combined. Item 7 involves adding edging at the Pavilion south planting area and bolt heads to the sloped railings. Items 8 and 9 assume the major changes would be incorporated into the park.

Please let me know if you have any questions.

Regards,

  
Jim Duffy



ITEM #1

#R5-3

ITEM #1

SK-

PLAZA FOUNTAIN  
STEPS SECTION 3

EXISTING EXPANSION JOINT  
TO REMAIN

NEW EXPOSED AGGREGATE  
CONCRETE PAVING TO MATCH  
EXISTING

NEW FOUNTAIN STONE

WATER LEVEL

EXISTING FOUNTAIN STONE TO  
REMAIN

SK-

PLAZA FOUNTAIN  
STEPS SECTION 2

SK-

PLAZA FOUNTAIN  
STEPS SECTION 1

Project Title

**Addison Arts and Events District**

Drawing Title

**PLAZA FOUNTAIN POOL EDGE PLAN**

Project Number

14516.05

Ref. Dwg No.

Drawn By

CLB

Scale

1/4"=1'-0"

Date

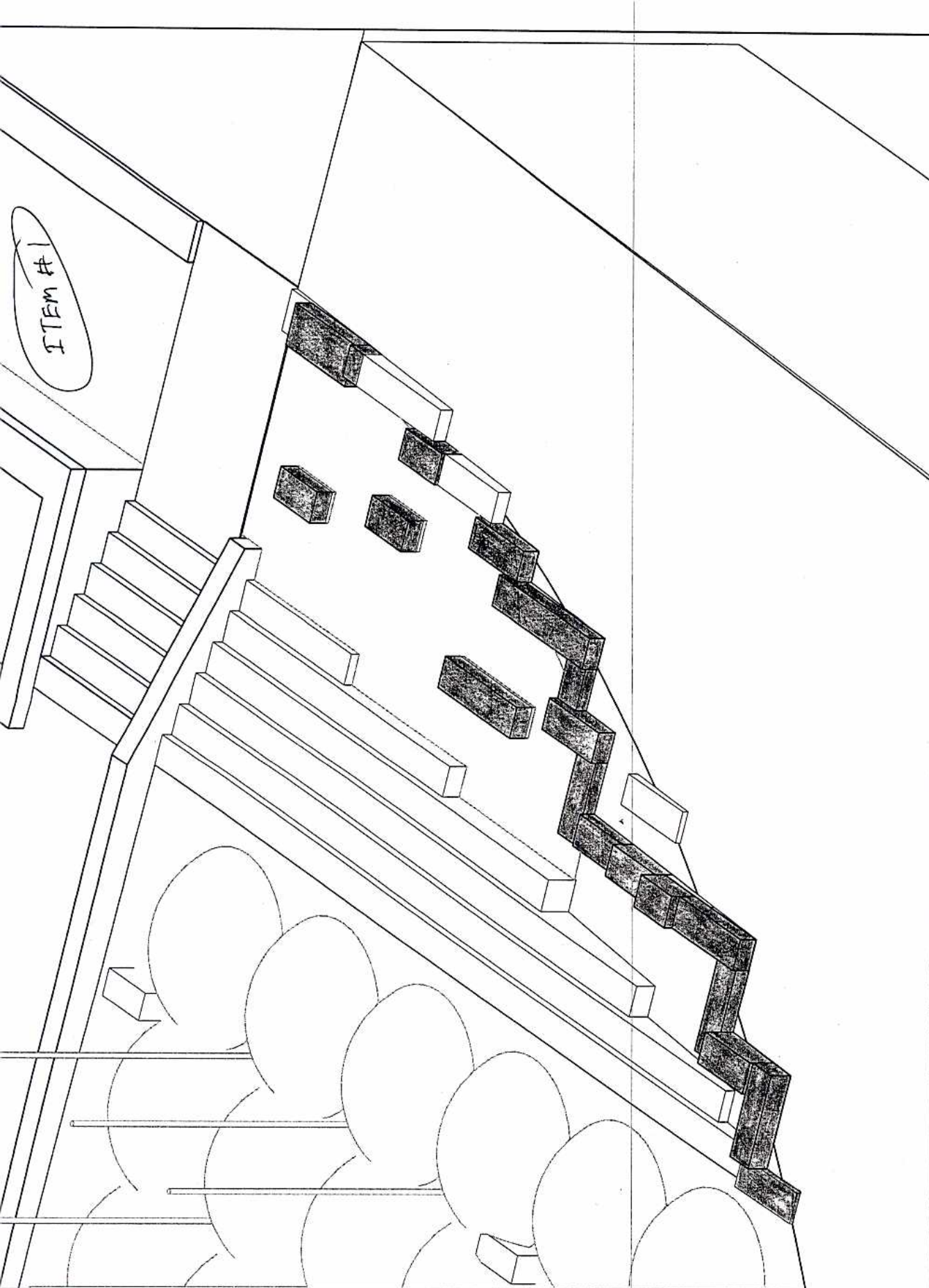
13 NOV 2003

Drawing Number

**SK-55**

**S A S A K I**





Project Title

**Addison Arts and Events District**

Drawing Title

**PLAZA FOUNTAIN POOL EDGE AXOMONMETRIC 1**

Project Number

14516.05

Ref. Dwg No.

Drawn By

CLB

Scale

NONE

Date

13 NOV 2003

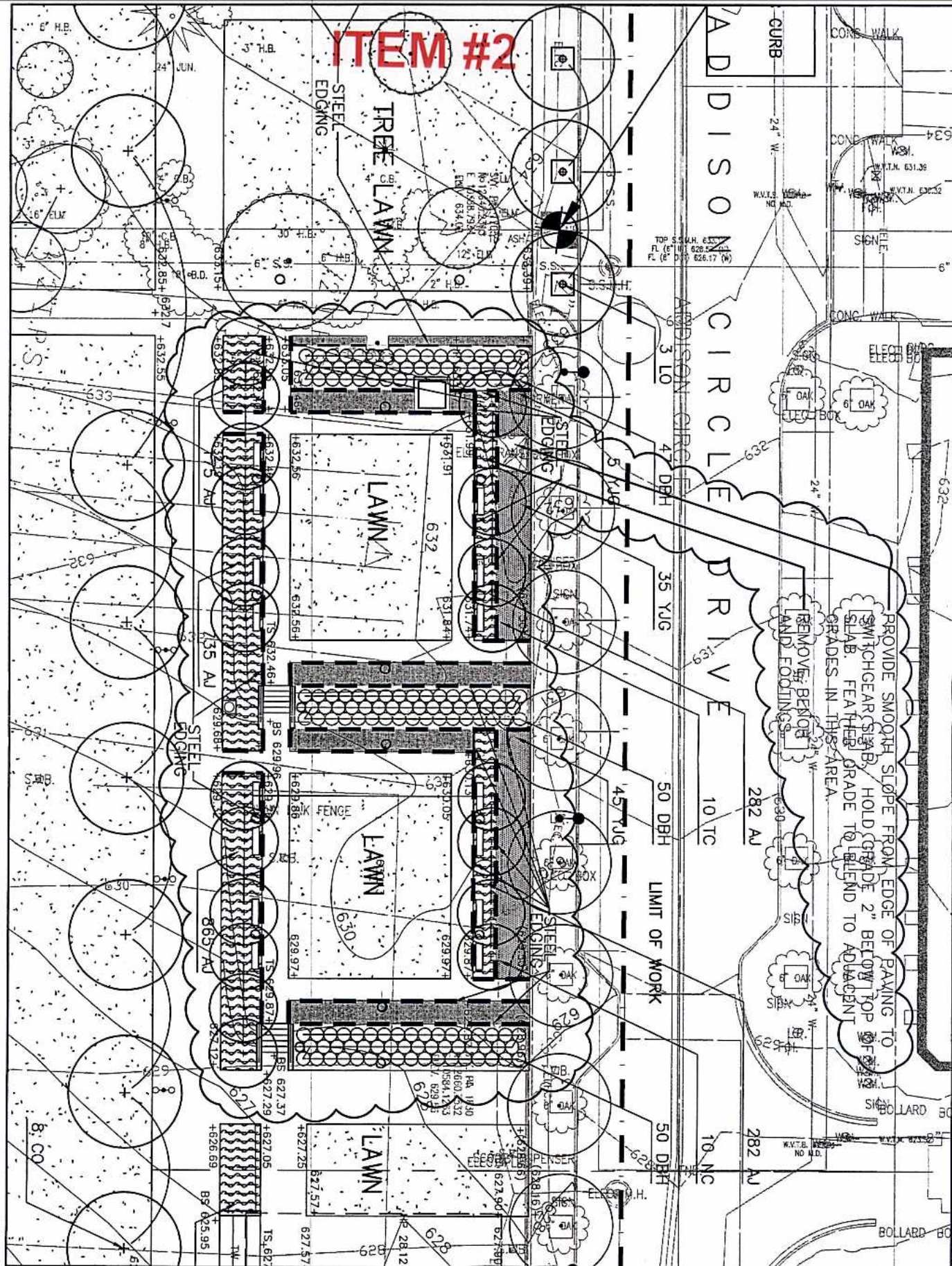
Drawing Number

**SK-57**

**S A S A K I**

64 Pleasant St. Watertown, MA 02472 617 926 3300





Project Title  
**Addison Arts and Events District**

Drawing Title  
**REVISED GARDEN AREA PLAN**

**SASAKI**

**ITEM #2**

Project Number  
 14516.05

Ref. Dwg No.  
 L1-2

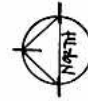
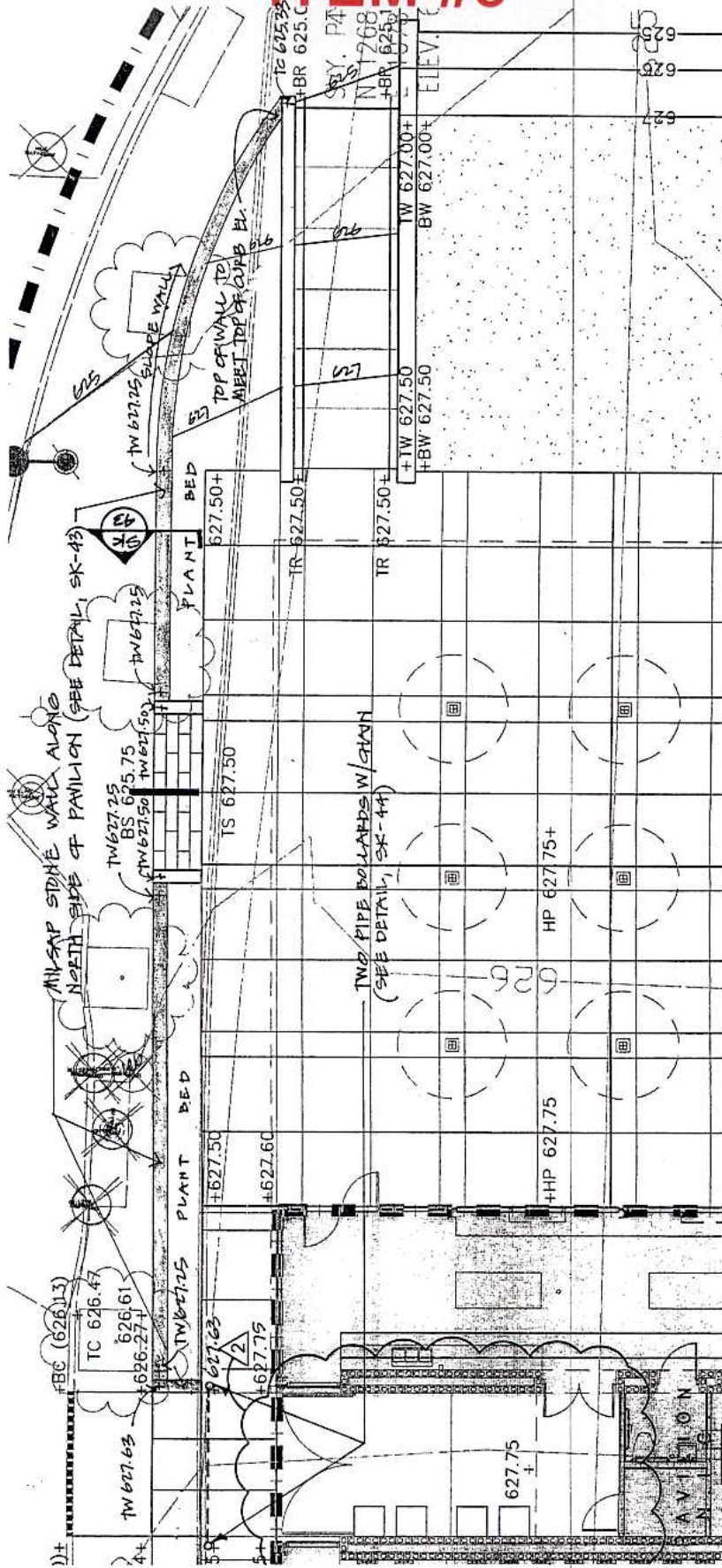
Drawn By  
 CLB  
 Scale  
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 Date  
 OCTOBER 27, 2003  
 Drawing Number

**SK-51**



ITEM #3

ITEM #3



Project Title  
**Addison Arts and Events District**

Project Number  
 14516.05

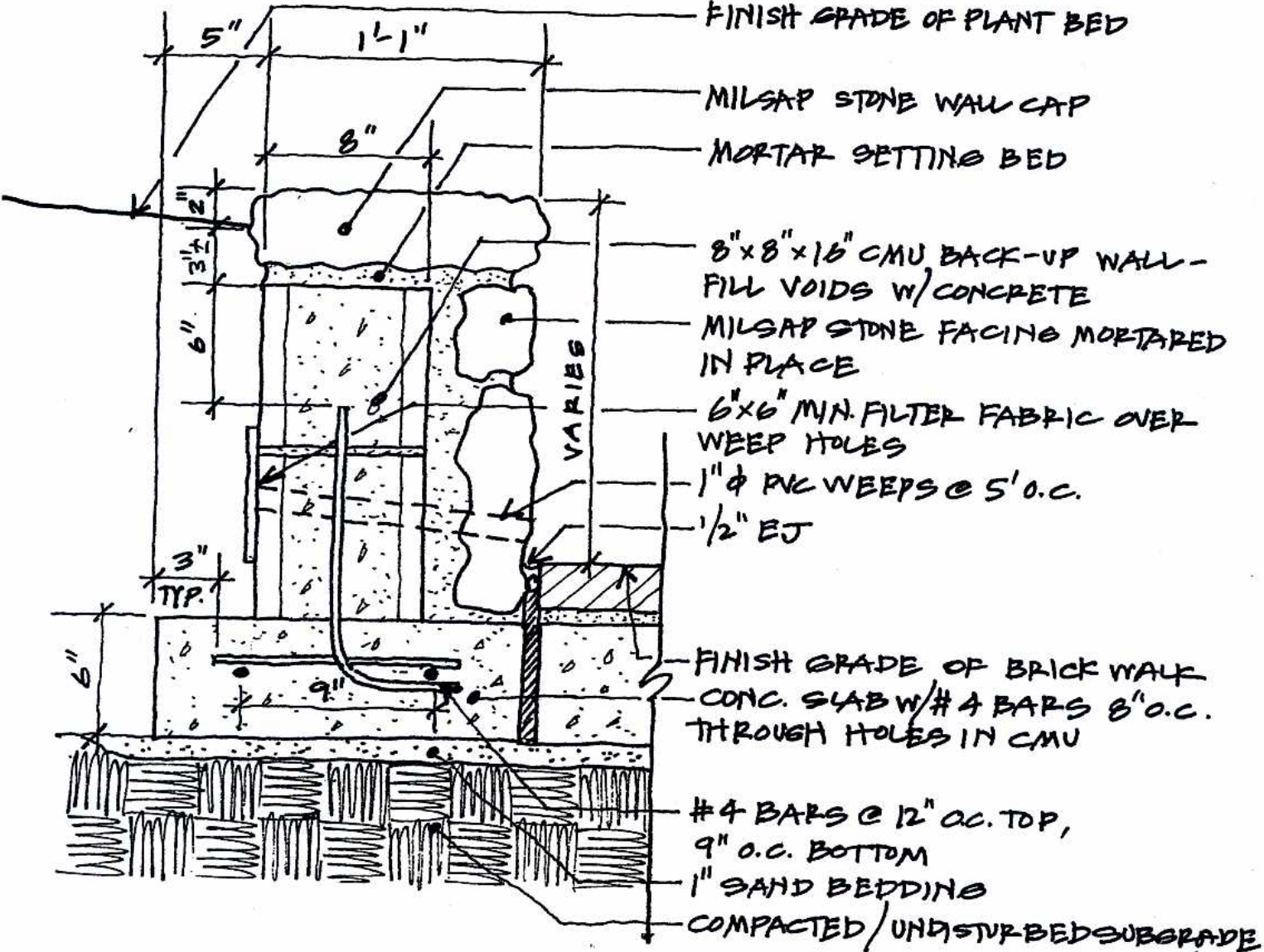
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 Date *9/24/03*  
 Drawing Number

Drawing Title  
**PLAN DETAIL - WALL & BOLLARDS N. SIDE OF PAVILION**

Ref. Dwg No. **C5-5**

**SK-42**

ITEM #3



Project Title

## Addison Arts and Events District

Project Number

**14516.05**

Drawn By *DCC*

Scale  $1\frac{1}{2}" = 1'-0"$

Date 9/24/03

Drawing Number

Drawing Title

SECTION - MILSAP STONE WALL  
N. SIDE OF PAVILION

Ref. Dwg No. **SK-42**

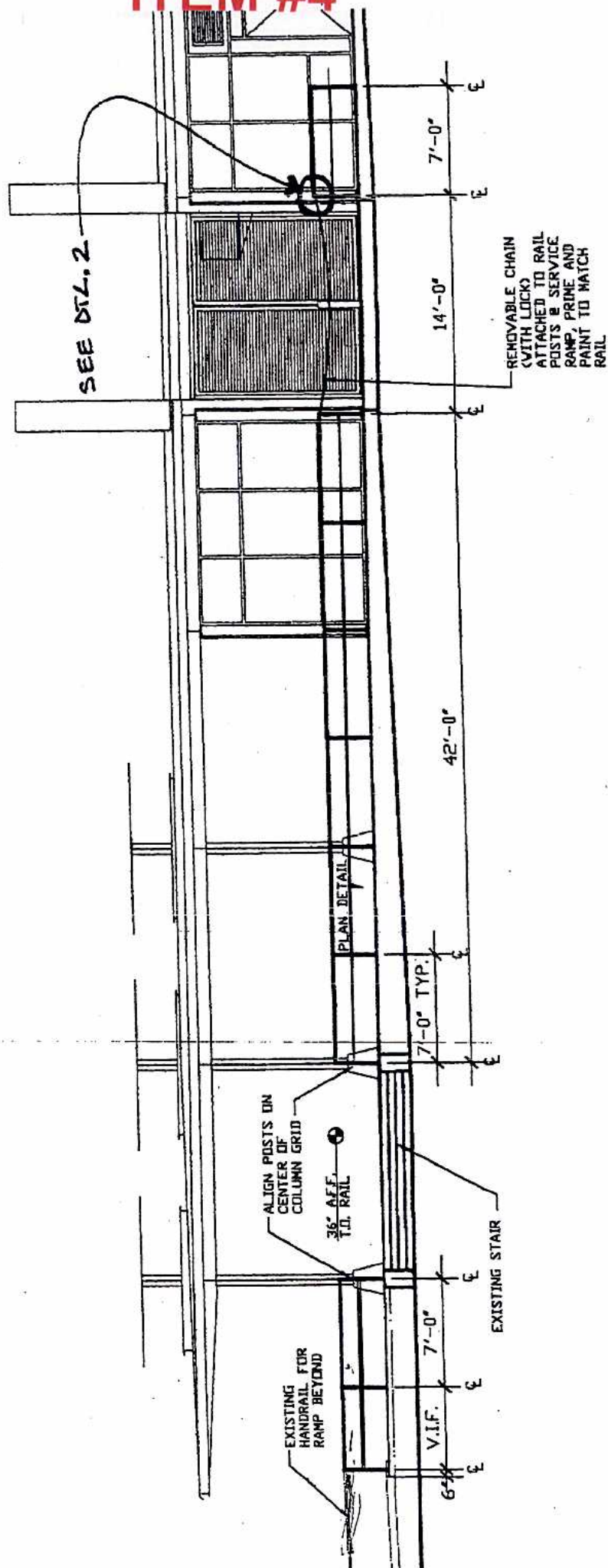
S A S A K I

64 Pleasant St. Watertown, MA 02472 617 926 3300

SK- 43



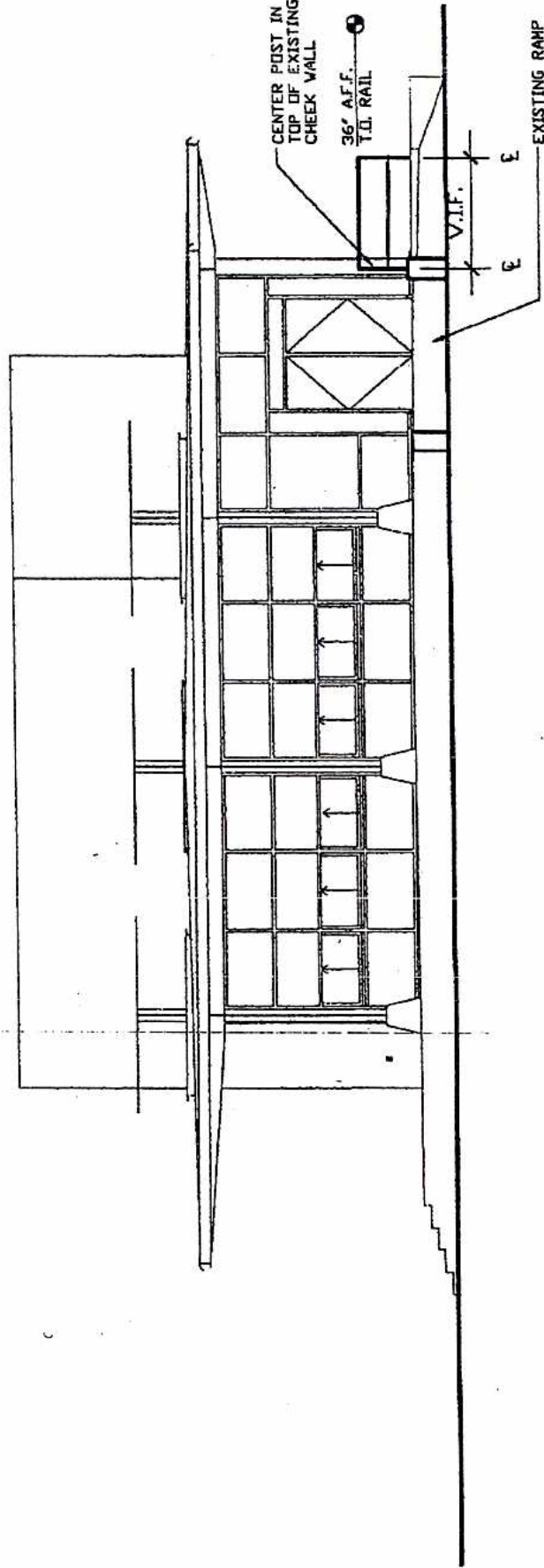
Item #4



ADDISON PAVILION  
HANDRAIL 11-3-03

NORTH ELEVATION FROM STREET

N.T.S.



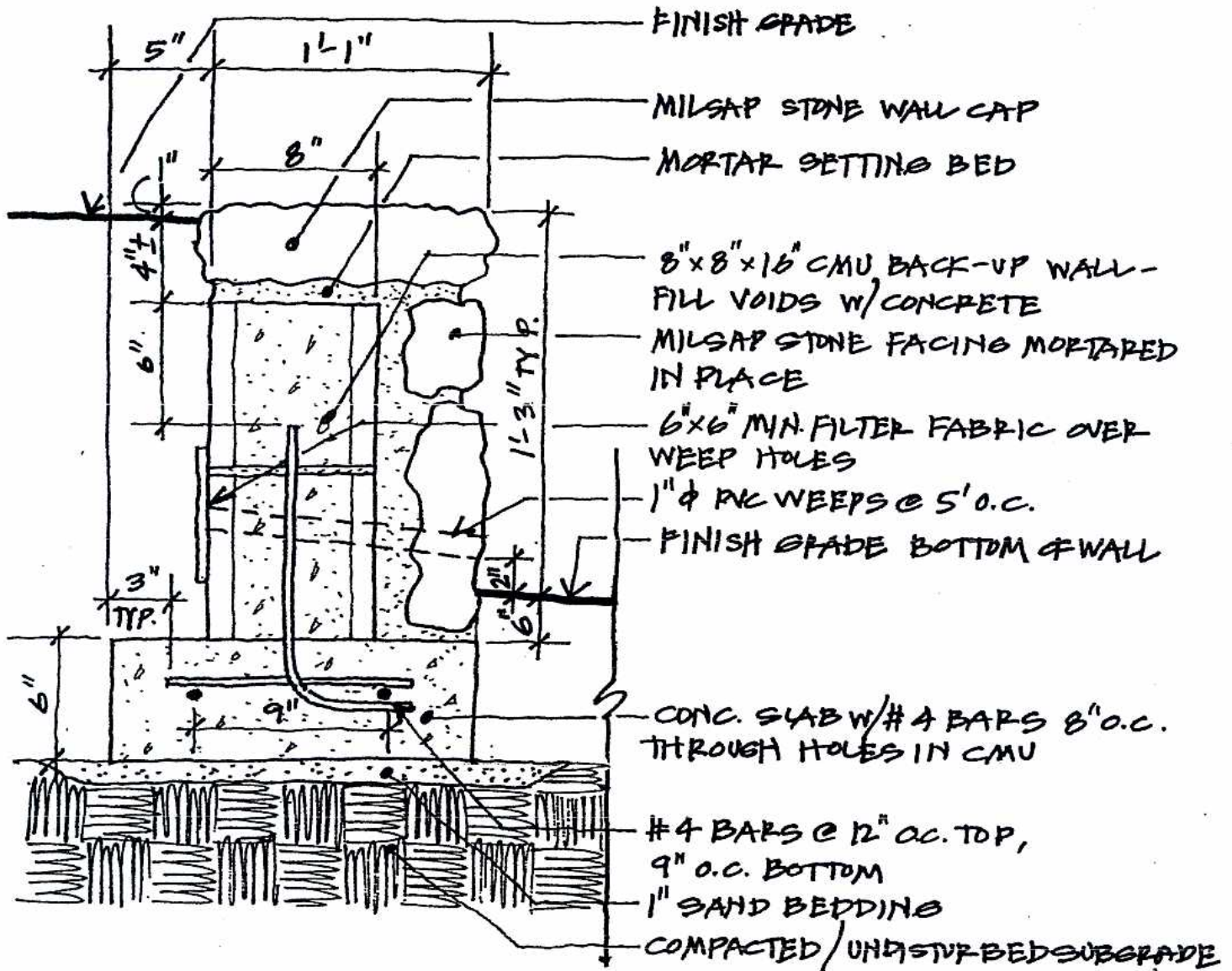
ADDISON PAVILION  
HANDRAIL 11'3"03

EAST ELEVATION

N.T.S.

# ITEM #5

# ITEM #5



Project Title

**Addison Arts and Events District**

Project Number

14516.05

Drawn By **DOC**

Scale **NONE**

Date **11/11/03**

Drawing Number

Drawing Title

**ADDITIONAL TERRACE WALL @ MAIN  
STAGE - SECTION**

Ref. Dwg No. **SK-53**

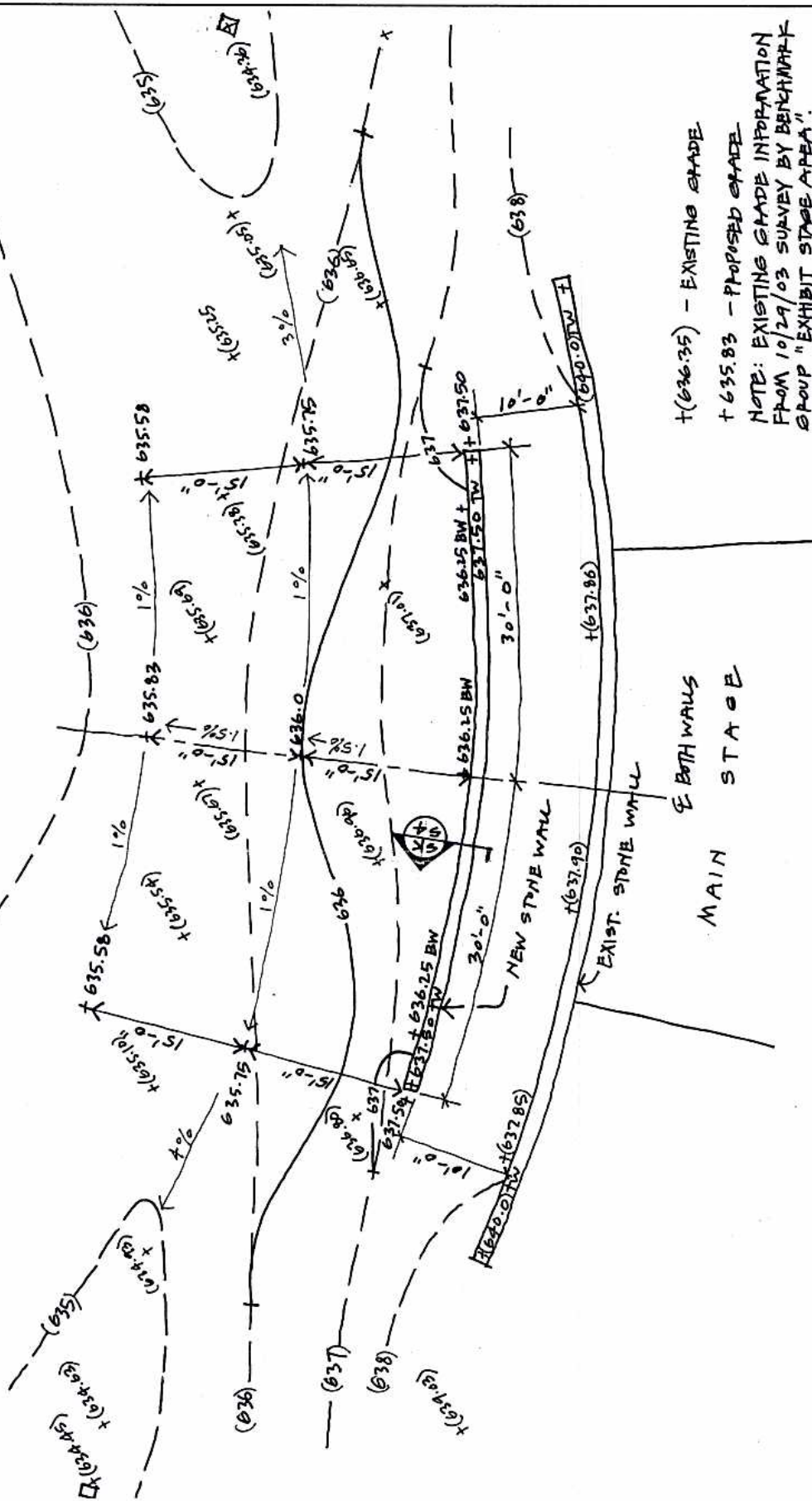
**SASAKI**

64 Pleasant St. Watertown, MA 02472 617 926 3300

**SK-54**



ITEM #5





**Council Agenda Item: #R6****SUMMARY:**

This item is to request the Council's approval of a contract with Sprint SPECTRUM L.P. to install and maintain a WLAN (Wireless Local Area Network) including a wireless Internet access service known as WiFi for a period of one year. WiFi access runs at a fast 11 Mbps in a range of 100 feet to a mile. A copy of the contract is attached.

**FINANCIAL IMPACT:**

Budgeted Amount: **\$28,055**

Cost: **\$0**

**BACKGROUND:**

Six months ago we received a request from the Conference Centre to evaluate the possibility of providing Internet access to their customers at the Conference Centre. They were looking for a total solution which would enable their customers to use wireless Internet access to download presentations, demonstrate websites, check e-mails, and access cooperate VPN (Virtual Private Network). Consequently, we contacted several different Internet Service Providers in the Dallas area. Initially, during the discovery period, we primarily focused on finding and negotiating a suitable solution for the Conference Centre. However, it was during that process that we were exposed to a new nationwide plan deployed by Sprint to install WiFi systems at the major convention centers and airports. This information changed our thought process and to some extent our level of expectation. We started to demand more from the vendors than just a solution. Finally, Sprint SPECTRUM L.P. came forward with a solution that was hard for the other vendors to match and was hard for Addison to ignore. Under this agreement Sprint will implement this project in 4 phases:

**Phase I (Strategy & Requirements Definition)**

- Conduct user and technical assessment to determine solution requirements
- Conduct a detailed RF site survey of the facilities to be covered and determine quantity and location of access points
- Conduct a security audit to detect potential rogue access points

**Phase II (Detailed System Design)**

- Design a wireless solution customized for the Addison based on the needs assessment and network environment
- Build security requirements and protocols into solution based upon the needs of the Town
- Acquire proper equipment including access points, network cards, devices, and antennas

**Phase III (Network Provisioning)**

- Configure all access points and devices to Sprint network
- Perform site preparation including power and LAN connectivity to AP locations.  
Mount and install access points
- Implement security features at the network and device side
- Test system for coverage, throughput, and security

**Phase IV (Network Management)**

- Provide on-going technical support and maintenance for wireless network
- Monitor network for traffic and usage, and generate reports capturing usage data
- Provide necessary network repair, maintenance, upgrades
- Continue to monitor for rogue access points and hackers

**RECOMMENDATION:**

Staff recommends that the Council authorize the City Manager to enter into a contract with SPRINT SPECTRUM L.P., for installation of a WLAN Equipment including WIFI services at the Conference Centre subject to final review & approval of the city attorney's office.

## TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT ("Agreement") is made by and between the Town of Addison, Texas ("Addison") and SPRINT SPECTRUM L.P., a Delaware limited partnership ("Sprint") and shall commence upon the latest date of execution by both parties ("Effective Date").

### BACKGROUND

A. Addison is the owner of the Addison Conference and Theatre Centre located at 15650 Addison Road, Addison, Texas 75001-3285 (the "**Conference Centre**").

B. Addison desires to make available to users of the Conference Centre a wireless local area network ("**WLAN**") in which a mobile user can connect to a local area network through a wireless (radio) connection. In order to provide the WLAN, Addison desires to grant to Sprint a temporary revocable license to install, manage and maintain a WLAN for public use at the Conference Centre pursuant to the terms and conditions of this Agreement.

C. Sprint is an established provider of wireless telecommunications services, and warrants and represents that it has the skills, qualifications, expertise and experience necessary to provide and perform the work and services described herein in an efficient manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers.

### AGREEMENT

For and in consideration of the above and foregoing premises and other good and valuable consideration set forth herein, Addison and Sprint do hereby agree as follows:

1. **Temporary License.** Addison licenses to Sprint the non-exclusive use of the Conference Centre to install, manage, and maintain a wireless local area network (WLAN). Sprint hereby accepts the Conference Centre in its "as-is" condition, and acknowledges that Addison (a) has made no representations or warranties whatsoever with respect to any of the Conference Centre and (b) has not agreed to alter or construct any improvements or otherwise modify the Conference Centre in connection with this Agreement.

2. **Use; Service.**

(a) **Permitted Uses.** The Conference Centre will be used by Sprint solely for the purpose of installing, managing, and maintaining a WLAN ("**Permitted Uses**") through the use and operation of the WLAN Equipment (as defined below).

(b) **Prohibited Uses.** Sprint shall ensure that no Sprint Parties (as defined below) with insufficient training, expertise, or experience to install, maintain, repair,

remove, or replace the WLAN Equipment shall enter or use the Conference Centre for or in connection with this Agreement. Sprint shall not replace or augment any component of the WLAN Equipment in order to provide additional services not expressly included in Permitted Uses (as opposed to replacing obsolete or defective WLAN Equipment or upgrading technology to provide the same services more efficiently or to improve the quality of the same services), without the express prior written consent of Addison.

(c) **Other Providers.** Addison has the right to enter into any agreement containing any terms with any person or entity ("**Other Provider**") to provide any WLAN service at the Conference Centre; however, as of the Effective Date, it is Addison's intent not to allow any Other Provider to provide WLAN service at the Conference Centre for a period of one (1) year from the Effective Date. In the event the use of the Conference Centre by any such Other Provider results in material and adverse interference with the WLAN Equipment, Sprint shall give Addison notice of such interference, and Addison shall have ten (10) days after its receipt of such notice to cause such interference to be cured. If such interference is not cured within such time period, Sprint (as its sole remedy) shall thereafter have the right without further notice to terminate this Agreement and to remove the WLAN Equipment in accordance herewith.

(d) The WLAN shall be available to users of the Conference Centre 24 hours per day, 7 days per week for the Term specified hereunder, subject to the termination provisions of this Agreement.

(e) Sprint shall purchase a sufficient number of access points, access gateway, routers, switches and other equipment necessary to operate a WLAN sufficient for providing wireless internet access to users of the Conference Centre (collectively "**WLAN Equipment**").

### **3. Term; Termination; New Agreement.**

(a) This Agreement will commence as of the Effective Date and continue for a period of 12 months ("**Term**"), unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding any other provision of this Agreement, Addison has the right to terminate this Agreement at any time and for any reason upon at least thirty (30) days notice to Sprint setting forth the date of termination. Sprint has the right to terminate this Agreement upon at least 30 days notice to Addison in the event that any license, permit, or other governmental approval ("**Approvals**") required for the installation or operation of the WLAN Equipment is withheld, revoked, withdrawn, canceled, expires, lapses, or is terminated (in each case, through no fault of Sprint, and provided Sprint exercises reasonable diligence to obtain such Approvals).

(b) At or prior to the expiration of this Agreement, the parties may seek (but will be under no obligation) to negotiate a new agreement ("**New Agreement**") regarding the provision, operation, and maintenance of a WLAN at the Conference Centre by Sprint. The New Agreement may contain a provision whereby Addison may receive 20% of Adjusted Gross Revenue, which is defined as all revenue actually received by Sprint

and any Affiliate of Sprint ("**Gross Revenue**") from users of Sprint's WLAN service at the Conference Centre, less (i) any rebates, adjustments, discounts or refunds paid by Sprint or its Affiliate, (ii) any refundable deposits and any sums invoiced, collected and paid out for any sales, use, rental or excise tax or other governmental or regulatory tariffs, and (iii) reasonable reserves for bad debt ("**Adjusted Gross Revenue**"). In the event the parties fail to execute a New Agreement, Sprint will discontinue performing its services in the Conference Centre, will remove all WLAN Equipment in accordance with the terms of this Agreement, will disconnect the backhaul from the access point, and neither party will have any further obligation to the other, except as otherwise provided for herein.

#### **4. Modification or Installation of Space or Equipment.**

(a) **Installation Plans.** Before installing, modifying, or removing any WLAN Equipment in any portion of the Conference Centre, Sprint shall deliver to the Addison Director of Information Technology (the "**Director**"), for review and approval, engineering drawings or plans and specifications (collectively, "**Installation Plans**") setting forth in detail the design, location, size, weight, material composition, method of installation, and, if applicable, frequency of the WLAN Equipment, and proposed locations and pathways for the WLAN Equipment, together with evidence reasonably satisfactory to Addison that the Installation Plans comply with the Operating Requirements. Addison's approval of the Installation Plans shall not constitute a representation or warranty by Addison that the Installation Plans comply with the Operating Requirements.

(b) **Installation Schedule.** At least 15 days prior to commencing initial installation of the WLAN Equipment, but in no event later than 30 days after the Effective Date, Sprint shall deliver to Addison a proposed installation schedule for the WLAN Equipment. Sprint shall immediately deliver an updated installation schedule, if any date set forth in the installation schedule previously delivered to Addison changes by more than 15 days.

(c) **Installation.** Sprint shall not install, modify, or remove WLAN Equipment without (i) Addison's prior approval of the Installation Plans and all contractors, subcontractors, and materials suppliers that Sprint proposes to utilize, and (ii) receipt by Addison of true and correct copies of Sprint's licenses and permits for operation and installation of the WLAN Equipment. The installation, connection, modification, or removal shall be performed (A) at the sole cost of Sprint, (B) in a good and workmanlike manner, (C) in accordance with the Installation Plans and all the Operating Requirements, (D) without unreasonably interfering with the use of any portion of the Conference Centre by Addison or its users, and (E) without causing an increase in the cost of operating or maintaining the Conference Centre. Any noisy or potentially disruptive installation or construction activity shall be conducted after the Conference Centre's normal business hours.

(d) **Theft.** With respect to all WLAN Equipment, except to the extent attributable to the gross negligence or willful misconduct of Addison or any Addison Parties (as defined below), Sprint will be responsible for and will bear the risk of loss or damage to any WLAN Equipment, whether by theft and/or vandalism or otherwise.

5. **Addison's Covenants.** As part of its obligations hereunder, Addison agrees that, at its sole expense, it will be responsible for purchasing from Sprint the backhaul necessary to provide internet access to users of the Conference Centre via the WLAN in the Conference Centre. Addison will maintain the backhaul from Sprint for twelve (12) months or the duration of this Agreement, whichever is longer; *provided, however*, if Sprint terminates this Agreement without cause or if Addison terminates this Agreement for cause attributable to a default or breach by Sprint, then Addison may terminate the backhaul arrangement. For purposes of this Agreement, the term "**backhaul**" means the 1.544Mb T-1 WAN circuit, which will enable connectivity to the Internet.

6. **Sprint's Covenants.** As part of its obligations hereunder, Sprint covenants and agrees as follows:

(a) **Back-office Support.** Sprint, at its sole expense, will be responsible for all back office applications (i.e., billing, customer care, etc.), provisioning any required access authentication device(s) including the customization, development and loading of the splash page and the provisioning of all necessary internet protocols and security features related to any access authenticating device(s) and/or access point(s), as applicable.

(b) **Site Preparation.** Sprint, at its sole expense, shall pay for all logistics fees including, but not limited to, the design and installation of the WLAN.

(c) **Network Management Services.** Sprint shall, at Sprint's expense, monitor the WLAN Equipment and inform Addison of any failure associated with the WLAN Equipment. Additionally, if Sprint receives any calls that result in Addison required support, Sprint shall inform Addison as soon as reasonably possible. Both parties shall establish support procedures in order to facilitate the expeditious repair or replacement of any inoperable WLAN Equipment.

(d) **Security.** Sprint shall cooperate fully with the Conference Centre's security procedures as the same currently exist or may be amended, provided copies of those procedures have been delivered to Sprint.

(e) **Performance Standards.** Sprint shall comply with all of its internal standards for quality, safety, continuity and customer service. All WLAN Equipment shall be installed and maintained in good working order.

(f) **Insurance.** Sprint shall, at Sprint's sole expense, maintain in effect at all times during the Term, the insurance coverages set forth in Attachment "A", appended hereto, which Attachment is incorporated herein and made a part hereof by this reference.

(g) **Revenue Collection and Sharing.** Sprint shall pay to Addison, as consideration for the license hereunder, a license fee (the “*License Fee*”) equal to twenty percent (20%) of the Adjusted Gross Revenue (as defined in Section 3.(b) above) from the provision, operation and use of the Sprint WLAN at the Conference Centre. Sprint shall be solely responsible at its sole cost and expense for collecting all revenue from the provision, operation and use of the WLAN and for paying to Addison the License Fee, if any. On or before the 45<sup>th</sup> day after the end of each month during the Term, Sprint shall remit to Addison the License Fee (representing 20% of the Adjusted Gross Revenue received by Sprint and any Affiliate of Sprint from the immediately previous month or partial month, as the case may be) by check, or wire, payable to Addison at 15650 Addison Road, Addison, TX 75001-3285 or at any other place as may from time to time be designated in writing by Addison. The initial monthly License Fee, if any, shall be due and payable on or before the 45<sup>th</sup> day after the end of the month of the Effective Date, and the last such License Fee, if any, shall be due and payable on or before the 45<sup>th</sup> day after the expiration or termination of this Agreement, and such obligation shall survive the expiration or termination of this Agreement. Sprint makes absolutely no representation or warranty that any revenues will be collected, but if any revenues are collected, such revenues are subject to the provisions hereof. No Licensee Fees shall accrue or become payable if Sprint does not collect any revenues from the WLAN service. The applicable charges detailed in this Section represent the sole charges payable by Sprint to Addison under this Agreement.

At Addison's request, Sprint shall promptly file with the Addison City Manager a report showing all revenues (Gross Revenue) and Adjusted Gross Revenue in connection with the provision, operation and use of the WLAN during any month (or partial month) of the Term. Such report shall be in sufficient detail to reasonably verify payments. Addison may, if it reasonably sees fit, require Sprint to provide copies of the books and records related solely to Sprint's WLAN service at the Conference Centre for examination in Addison, Texas by a representative of Addison to ascertain the correctness of the reports agreed to be filed herein, and Sprint shall fully cooperate in making available its records and otherwise assisting in these activities at Sprint's expense. Should any payment due date required by this Agreement fall on a weekend or declared bank holiday, payment shall be delivered to Addison no later than the close of business of the next working day after any specifically required due date contained within this Agreement. Any information provided by Sprint under this Section shall be subject to the confidentiality provisions of Section 19 below.

(h) Sprint will facilitate dedicated WLAN access in the exhibit halls of the Conference Centre and agrees to sell Addison dedicated unlimited access per exhibitor, per exhibit hall, per 24 hour period at a wholesale rate of \$500 per day upon Addison's request. Addison has the rights to sell dedicated WLAN access to exhibitors at any desired rate and retain all profits from such sale. The parties agree that the calculation of Gross Revenues and Adjusted Gross Revenues under this Agreement do not include any revenues of Sprint attributable to a wholesale purchase under this Section.



(i) **Operating Requirements.** Sprint will, at Sprint's expense, ensure that Sprint Parties, the WLAN Equipment (including installation, maintenance, operation, and removal thereof), and any space where WLAN Equipment (the "***WLAN Equipment Space***") is located, are at all times in material compliance with the following defined items, as the same may be amended from time to time (collectively, the "***Operating Requirements***").

(i) "***Applicable Law***": to the extent the same affect Addison or Sprint solely with respect to the WLAN Equipment Space and any WLAN Equipment: (A) all laws, rulings, orders, regulations, restrictions, or requirements currently in effect or adopted in the future by any governmental entity, including licensing, zoning, building, and fire codes, and rules, regulations, and orders of the Occupational Safety and Health Administration ("***OSHA***"), Federal Communications Commission ("***FCC***"), and Federal Aviation Agency; and (B) all easements, requirements, standards, or restrictions currently in effect or adopted in the future by any board of fire underwriters, insurance carrier, or utility company. If Addison determines that Addison must incur costs to comply with Applicable Law, or to conduct a survey to determine compliance with Applicable Law, solely as a result of the installation, operation, or presence of the WLAN Equipment in the Conference Centre, Addison will give reasonable notice to Sprint of that determination and allow Sprint a reasonable opportunity to recommend reasonable alternatives to incurring such costs. If no reasonable alternative is available, Sprint may either terminate this Agreement upon written notice and remove the WLAN Equipment or agree to reimburse Addison for such costs. If Sprint agrees to reimburse Addison for such costs, within 20 days after receipt of Addison's invoice, Sprint will reimburse Addison for all reasonable costs incurred by Addison (I) in complying with Applicable Law as a result of the installation, operation, or presence of the WLAN Equipment in the Conference Centre, and (II) to conduct surveys to determine compliance with Applicable Law as a result of the installation, operation, or presence of the WLAN Equipment in the Conference Centre. This Section does not require Sprint to renovate or reconstruct any portion of the Conference Centre at Sprint's expense to comply with Applicable Laws.

(ii) "***Rules and Regulations***": the rules and regulations promulgated by Addison for the Conference Centre.

(iii) "***Technical Standards***": any technical standards adopted by Addison from time to time in accordance with industry standards for WLAN service. If any Technical Standards adopted by Addison require Sprint to modify, renovate, or revise the then-existing installation, operation, or maintenance of the WLAN Equipment, Sprint will do so, at Sprint's sole expense, within a reasonable time thereafter, not to exceed 60 days after receipt of notice. Notwithstanding the foregoing, if any Technical Standards during the Term require changes to the WLAN Equipment Space or WLAN Equipment that would cause Sprint to incur significant out-of-pocket costs, and such revisions are not reasonably related to Applicable Law or health and safety concerns, Sprint will have the right to terminate this Agreement without penalty or additional fees by notice delivered to Addison no later than 30 days after Addison's issuance of such Technical Standards.

(j) **Condition of WLAN Equipment; Repairs.** Sprint shall (i) maintain and operate the WLAN Equipment in a good and safe condition; (ii) keep the WLAN Equipment Space in a safe condition and free from all trash, debris, and waste resulting from its use by Sprint; and (iii) repair all damage to the WLAN Equipment Space or the Conference Centre occurring in connection with the installation, use, operation, maintenance, relocation, or removal of the WLAN Equipment. If Sprint fails to perform any of the foregoing obligations within 10 business days after Addison's notice of such failure, Addison may perform such obligations on Sprint's behalf; and Sprint will reimburse Addison for all reasonable costs incurred in connection therewith, within 15 days after receipt of Addison's invoice. Sprint's reimbursement obligation will survive the expiration or earlier termination of this Agreement. Addison will have no responsibility for maintaining the WLAN Equipment or any portion of the WLAN Equipment Space.

(k) **Costs; Liens.** Sprint will pay or cause to be paid all costs for work performed or materials provided by or at the direction of Sprint or related to the WLAN Equipment or the WLAN Equipment Space. Sprint will keep the Conference Centre and any other property of Addison free and clear of all liens, whether mechanic's, materialman's, or otherwise, related to the installation, operation, maintenance and repair of the WLAN Equipment.

(l) **Surrender of Space.**

(i) **Removal of WLAN Equipment.** Upon expiration or earlier termination of this Agreement, Sprint will remove all of the WLAN Equipment from the Conference Centre and peaceably surrender the WLAN Equipment Space and any other portion of the Conference Centre used by Sprint hereunder to Addison in the same condition such premises were in on the Effective Date, excepting (A) ordinary wear and tear and (B) if termination resulted from a Casualty or Taking (as defined below), damage not required to be repaired by Sprint.

(ii) **Failure to Remove.** If Sprint fails to remove the WLAN Equipment from the Conference Centre within 10 business days after the expiration or earlier termination of this Agreement, Addison may remove, store, or dispose of any remaining WLAN Equipment in any manner Addison deems appropriate. Sprint will reimburse Addison for all costs incurred by Addison in connection therewith, within 30 days after Addison's request. In addition, if Sprint fails to remove the WLAN Equipment from the Conference Centre within 10 business days after the expiration or earlier termination of this Agreement without executing a New Agreement (unless negotiations for a New Agreement are ongoing), Sprint will, at the option of Addison, be deemed to be holding over, subject to all provisions of this Agreement, except that the monthly License Fee will be an amount equal to 150% of the highest monthly License Fee paid to Addison.

(m) **Press Releases.** Addison and Sprint will not, without the other party's prior written consent, which consent will not be unreasonably withheld, distribute any news release or make any public announcement relating to this Agreement, its value, or its

terms and conditions, or in any other manner advertise or publish this Agreement, its value, or its terms and conditions. Each party agrees to submit a copy of any written news release or public announcement to the other party for approval prior to release. Notwithstanding the foregoing, Sprint acknowledges that Addison is required to make this Agreement available for public review and discuss the terms of this Agreement at a public forum to comply with the laws applicable to the governance of Addison. This provision is not intended to restrict Addison from complying with its duties and obligations under any applicable state and local laws and any actions taken in furtherance of such compliance will not be a breach of this provision. Additionally, Addison may publicize the availability of the WLAN service at the Conference Centre in any manner that does not include the use of Sprint's name, logo or trademark without obtaining Sprint's consent. Any other discretionary publicity and announcements concerning this Agreement, or involving the use of either party's name, logo or trademark, will be subject to each party's prior written consent.

(n) **Advertising Solicitations.** Sprint shall not conduct nor permit any door-to-door advertising or any solicitation of business in the Conference Centre. Sprint shall not advertise, solicit, or otherwise market in the common areas of the Conference Centre without the express approval of the Manager of the Conference Centre ("***Conference Centre Manager***"), which approval may be withheld in the sole and absolute discretion of the said Manager. Notwithstanding the foregoing prohibition, Sprint shall be entitled to publicize the availability of the WLAN service to guests at the Conference Centre, subject to the prior review and approval of the Conference Centre Manager, which approval shall not be unreasonably withheld.

(o) **Security.** Sprint shall cooperate fully with Addison's security procedures for the Conference Centre, including locking all equipment rooms upon completion of Sprint's access. Sprint shall surrender all keys, master entry cards, or other means of Conference Centre access in Sprint's possession, upon the expiration or earlier termination of this Agreement. ADDISON WILL HAVE NO OBLIGATION TO SPRINT, SPRINT'S PERSONNEL, CONTRACTORS, OR OTHER AGENTS, OR THEIR PERSONNEL, REGARDING ITS OR THEIR SECURITY WHILE AT THE CONFERENCE CENTRE.

## **7. Certain Rights Reserved by Addison**

(a) **Right to Relocate Equipment.** At any time after the execution of this Agreement, Addison may, upon 60 days' notice ("***Relocation Notice***"), cause Sprint to relocate all or any portion of the WLAN Equipment to other space in the Conference Centre ("***Substitute Space***"). If the Substitute Space (i) is less suitable than the WLAN Equipment Space for Sprint's operations in the Conference Centre, or (ii) is not concurrently available to permit relocation without interruption of the Permitted Uses, then Sprint will have the option to terminate this Agreement by notice delivered to Addison no later than 15 business days after receipt of the Relocation Notice. Sprint will have up to 45 business days after receipt of the Relocation Notice to complete the relocation. Sprint may perform a brief parallel cutover, if reasonably required by the relocation, to ensure that the relocated Equipment is operational.

(b) **Screening of Equipment.** At any time during the Term, Addison may require Sprint to install, at Sprint's sole expense, a device screening the WLAN Equipment from public view ("***Screening Device***"), provided the Screening Device will not materially and adversely interfere with the operation of the WLAN Equipment. The Screening Device will be installed in accordance with plans and specifications approved by Addison, and will otherwise comply with all Operating Requirements and all other requirements of this Agreement. At the option of Addison, Sprint will remove the Screening Device at the expiration or earlier termination of this Agreement, and restore the area in which the Screening Device was installed to its original condition.

## **8. Access.**

(a) **By Sprint.** Sprint will have access to the Conference Centre for the purposes set forth herein on the following conditions:

(i) **Notice.** Sprint will use reasonable efforts to provide to the Conference Centre Manager at least 24 hours advance notice of any need for access, except for disruption of Sprint's services ("***Disruption***") or an Emergency, and at least 2 hours' advance notice of any need for access because of a Disruption or Emergency. In the event Addison receives less than 24 hours' notice of Sprint's desire to access the Conference Centre if no Disruption or Emergency exists, or less than 2 hours' notice if an Disruption or Emergency exists, Addison will use commercially reasonable efforts to accommodate Sprint's request.

(ii) **Procedure.** Prior to the initial installation of the WLAN Equipment, Sprint will deliver to Addison, in care of the Conference Centre Manager, and thereafter keep current, a list of Sprint's employees and contractors who are permitted to access the Conference Centre. Access to the Conference Centre and to the WLAN Equipment Space may be arranged through the Conference Centre Manager or, after the normal business hours for the Conference Centre, through the security personnel at or servicing the Conference Centre. **Sprint authorizes Addison to deny access to the Conference Centre to any of Sprint's employees or contractors who are not on Sprint's permitted access list or do not present satisfactory proof of identity to Conference Centre management or security; provided, however, Addison will have no liability to Sprint as to any access granted by Addison.** Addison may require that a representative of Addison accompany Sprint during such access. If Sprint requests access to the Conference Centre at times other than the normal business hours for the Conference Centre, Sprint may be required to reimburse Addison for reasonable trip charges and overtime charges incurred by Addison in connection with after hours access.

(b) **By Addison.** Addison will have access at all times to any portion of the WLAN Equipment Space (i) in the event of an Emergency, (ii) to inspect the WLAN Equipment visually, (iii) to perform any obligations Sprint fails to perform timely after the expiration of any applicable grace period, (iv) to assure Sprint's compliance with this Agreement, (v) to perform maintenance, repairs, and alterations to the WLAN Equipment Space, or (vi) to make technical measurements or tests related to the WLAN Equipment,



provided no hard electrical connections will be made unless Addison gives Sprint at least 24 hours notice.

## **9. Interference.**

(a) **Evaluation.** Sprint will be solely responsible for determining whether any potential for Interference (as defined below) exists, prior to installing the WLAN Equipment. Upon no less than 24 hours' prior notice to Addison, Sprint will be permitted access to the Conference Centre for the purpose of conducting all tests and other investigations, studies, and evaluations that Sprint deems necessary to evaluate potential Interference (collectively, "***Evaluation***"). Sprint will have the option to terminate this Agreement by notice delivered to Addison no later than 30 days after the Effective Date, if the Evaluation discloses: (i) potential Sprint-caused Interference that cannot be corrected by adjusting Sprint's signal, by shielding the WLAN Equipment, or by shielding the equipment of any third party experiencing the Interference, with such third party's approval; or (ii) potential third party-caused Interference that (A) originates outside the Conference Centre, or (B) originates on or in the Conference Centre, but cannot be corrected by adjusting Sprint's signal, by shielding the WLAN Equipment, or by shielding the equipment of any third party causing the Interference, with such third party's approval. UNDER NO CIRCUMSTANCES WILL SPRINT INSTALL THE WLAN EQUIPMENT IF AN EVALUATION DISCLOSES POTENTIAL SPRINT-CAUSED OR THIRD PARTY-CAUSED INTERFERENCE, UNLESS THE POTENTIAL INTERFERENCE HAS BEEN ELIMINATED TO THE REASONABLE SATISFACTION OF ADDISON. Sprint will also conduct an Evaluation if Addison approves installation of new or additional equipment, after the initial installation of the WLAN Equipment. If Sprint is unable to eliminate any potential Interference disclosed by the Evaluation through one of the methods described above to the reasonable satisfaction of Addison, Sprint will not install any new or additional equipment.

(b) **Procedure.** If, at any time during the Term, (i) any electrical output, electromagnetic output, radio frequency, or other electromagnetic signals or noise resulting from the operation of the WLAN Equipment, in Addison's reasonable opinion, adversely affects the equipment, machinery, or systems of Addison or any tenant of the Conference Centre or causes degradation of reception or transmission on the equipment of Other Providers in the Conference Centre (collectively, "***Interference***"), and (ii) Sprint does not correct the Interference within 24 hours after receipt of telephonic or written notice from Addison, Sprint will immediately cease operations (except for intermittent testing on a schedule approved by Addison), until the Interference has been corrected to the satisfaction of Addison. If such Interference has not been corrected within 30 days after Addison's notice, Addison will, in addition to any other remedies, have the right to immediately terminate this Agreement by notice to Sprint. If, in Addison's reasonable opinion, Interference is creating imminent danger of injury to person or property ("***Emergency***"), Addison will give verbal notice (either in person or by telephone) of the Emergency to Sprint, who will act immediately to remedy the Emergency; and Addison will have the right to shut down the WLAN Equipment immediately, until the Emergency is resolved.

**10. Service Interruptions; Equipment Malfunctions.** All of the following (collectively, "***Equipment Malfunction***") will be the sole responsibility of Sprint and will not constitute an Addison default or an eviction of Sprint: (a) interruption or suspension of electrical service to the WLAN Equipment, (b) malfunction or non-functioning of the WLAN Equipment, and (c) repair, maintenance, loss of, or damage to the WLAN Equipment. Sprint will be responsible for obtaining its own backup power supply, if desired, and power surge protection, subject to the approval of Addison. Sprint Waives all Claims against Addison Parties arising, or alleged to arise, from an Equipment Malfunction, subject to Section 4.(d).

**11. Indemnities and Waivers.**

(a) **Definitions.** The "***Sprint Parties***" are Sprint and any Affiliate and their respective directors, officers, managers, employees, agents, representatives, contractors, subcontractors, anyone employed by any of them, or anyone for whose acts or omissions any of them are liable (each being a "***Sprint Party***"). The "***Addison Parties***" are Addison and its officials, officers, employees, and agents (each being an "***Addison Party***"). "***Claims***" are all claims, demands, proceedings, liabilities, expenses (including reasonable attorneys' and experts' fees), costs, judgments, harm, damages, fines, and penalties. "***Waive***" means to relinquish a right or release another party from liability in connection with a Claim.

(b) **Allocation of Risks.**

(i) Sprint shall defend, indemnify, and hold harmless the Addison Parties from and against any and all third-party Claims arising, or alleged to arise, from or out of any act or omission of Sprint under or related to this Agreement, including any Claim related to personal or bodily injury (including, without limitation, sickness, disease, or death), property damage or destruction, breach of contract, or any other harm for which any type of relief or remedy is sought (whether at law, in equity, or otherwise).

(ii) Addison will defend, indemnify, and hold harmless the Sprint Parties from and against all third-party Claims against a Sprint Party arising, or alleged to arise, from any act or omission of Addison under or related to this Agreement, including any Claim related to personal or bodily injury, death, property damage or destruction, or any other harm for which any type of relief or remedy is sought (whether at law, in equity, or otherwise).

(iii) Sprint Waives any interruption to Sprint's business or any Claim for loss of use of the Conference Centre, the WLAN Equipment Space, or any WLAN Equipment, subject to Section 4.(d).

(c) **Scope of Indemnities and Waivers.** THE INDEMNITIES, HOLD HARMLESS, WAIVERS, AND OBLIGATIONS TO DEFEND CONTAINED IN THIS SECTION OF THIS AGREEMENT WILL BE ENFORCED FOR THE BENEFIT OF THE BENEFICIARY THEREOF.

(d) **Survival.** The indemnities, hold harmless, obligations to defend, and Waivers contained in this Agreement are independent of, and will not be limited by, each other or any insurance obligations contained in this Agreement, and will survive the expiration or earlier termination of this Agreement, until all Claims against each party are fully and finally barred by applicable statutes of limitations.

(e) **LIMITATION OF DAMAGES.** Neither party will be liable to the other for consequential, indirect, or punitive damages for any cause of action, whether in contract, tort or otherwise. Consequential damages include, but are not limited to, lost profits, lost revenues, and lost business opportunities, whether or not the other party was or should have been aware of the possibility of these damages.

(f) **NO WARRANTIES.** EXCEPT FOR REPRESENTATIONS MADE OR AS OTHERWISE PROVIDED FOR HEREIN, THE WLAN EQUIPMENT, THE WLAN SERVICES AND ALL ASSOCIATED DOCUMENTATION PROVIDED BY SPRINT UNDER THIS AGREEMENT ARE PROVIDED “AS IS,” WITHOUT ANY WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SPRINT DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

(g) **Indemnification Procedures.** Promptly, upon becoming aware of any matter which is subject to the provisions of this Section (a “Claim”), the party seeking indemnification (the “Indemnified Party”) must give notice of the Claim to the other party (the “Indemnifying Party”), accompanied by a copy of any written documentation regarding the Claim received by the Indemnified Party.

(i) The Indemnifying Party will retain the right, at its option, to settle or defend, at its own expense and with its own counsel, the Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of the Claim, with its own counsel and at its own expense; but the Indemnifying Party will have the right to control the settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party’s prior written consent. The parties will cooperate in the settlement or defense and give each other full access to all relevant information.

(ii) If the Indemnifying Party (a) fails to notify the Indemnified Party of the Indemnifying Party’s intent to take any action within 30 days after receipt of a notice of a Claim or (b) fails to proceed in good faith with the prompt resolution of the Claim, the Indemnified Party, with prior written notice to the Indemnifying Party and without waiving any rights to indemnification, may defend or settle the Claim without the prior written consent of the Indemnifying Party. The Indemnifying Party will reimburse the Indemnified Party on demand for all Damages incurred by the Indemnified Party in defending or settling the Claim.

(iii) Neither party is obligated to indemnify and defend the other with respect to a Claim (or portions of a Claim): (a) if the Indemnified Party fails to promptly

notify the Indemnifying Party of the Claim and fails to provide reasonable cooperation and information to defend or settle the Claim; and (b) if, and only to the extent that, that failure materially prejudices the Indemnifying Party's ability to satisfactorily defend or settle the Claim.

**12. Hazardous Materials.**

(a) **General Covenant.** Sprint will not cause or permit the storage, use, generation, release, or disposal of any Hazardous Materials in the Conference Centre without the prior written consent of Addison, except for the use and storage of supplies used in the ordinary course of Sprint's business, provided (i) such materials are in insubstantial quantities, properly labeled, and contained, (ii) such materials are used, transported, handled, and disposed of in accordance with the more stringent of Applicable Law or the highest industry standards, and (iii) for each such Hazardous Material, Sprint will give Addison notice of its presence and a copy of the current, applicable national safety data sheet. For purposes of this Agreement, the term "***Hazardous Materials***" means any explosives, radioactive materials, or other hazardous substances that are regulated or governed by Applicable Law.

(b) **Existing ACMs and PACMs.**

(i) **ACM Study.** Prior to installing, modifying, or removing any WLAN Equipment, Sprint shall review the written conclusions of the most recent investigation performed, if any, to determine the existence and location of asbestos-containing materials ("***ACMs***") or presumed asbestos-containing materials ("***PACMs***") for the portion of the Conference Centre in which the WLAN Equipment is to be installed ("***ACM Study***"). Addison shall make the ACM Study available in the Conference Centre management office. **IN NO EVENT SHALL SPRINT BEGIN PREPARATION OF INSTALLATION PLANS UNTIL SPRINT HAS REVIEWED AN ACM STUDY, IF ANY.**

(ii) **Compliance.** Sprint will be solely responsible for (A) determining solely from the ACM Study, prior to preparation of any Installation Plans, whether any ACMs or PACMs might be disturbed by Sprint's employees or contractors, and (B) complying with all Applicable Law, including giving notices to employees and using contractors certified to work in areas containing ACMs or PACMs. Any required reporting to, or contact with, any government agency having jurisdiction over the ACMs will be handled by, or at the direction of, Addison. **IN NO EVENT WILL SPRINT DISTURB EXISTING ACMs OR PACMs SHOWN IN AN ACM STUDY OR OF WHICH SPRINT IS AWARE.** Sprint is not required to perform independent investigations of potential Hazardous Materials, including ACMs and PACMs, at the Conference Centre.

(iii) **Potential Disturbance of ACMs.** If, after reviewing an ACM Study, Sprint determines that its work might disturb existing ACMs or PACMs, Sprint will immediately report the potential disturbance to Addison. If, during installation, Sprint encounters ACMs or PACMs not shown in an ACM Study, Sprint will immediately stop work in the affected area, report the condition to Addison, and not



resume work in the affected area unless Sprint receives approval from Addison. In either such event, Addison will have the option, exercisable by notice delivered to Sprint, to: (A) require that the WLAN Equipment be installed in a portion of the Conference Centre where no disturbance or ACMs or PACMs will be necessary; or (B) terminate this Agreement.

(c) **Indemnity.** Sprint will defend, indemnify, and hold harmless the Addison Parties against all third-party Claims arising, or alleged to arise, out of any deposit, spill, discharge, or other release of Hazardous Materials from Sprint's WLAN Equipment and any other equipment or materials brought onto the Conference Centre premises by Sprint or its employees, contractors or agents. Sprint will not be responsible or liable for Claims or clean-up expenses related to any pre-existing Hazardous Materials at the Conference Centre.

**13. Default and Remedies.** If Sprint (a) fails to pay the License Fee or any other monetary obligation under this Agreement when due, and such failure continues after 10 days notice, or (b) fails in the performance of any of the other terms, covenants, and conditions of this Agreement, and such failure continues after the lesser of 20 days notice or any shorter cure period expressly provided for herein, then Addison may do any or all of the following: (i) disconnect the WLAN Equipment; (ii) prohibit Sprint's access to the Conference Centre and the WLAN Equipment Space; (iii) terminate this Agreement; or (iv) exercise any other rights or remedies permitted by Applicable Law. All rights and remedies are cumulative and not exclusive of any other rights or remedies available to Addison under this Agreement, at law, or in equity. No failure or delay by Addison in exercising any remedy provided in this Agreement shall be construed as a forfeiture or waiver of the same or any other remedy at a later time.

**14. Casualty or Taking.** If all or a portion of the Conference Centre is damaged by fire or other casualty ("**Casualty**") or is taken, condemned, or conveyed in lieu of condemnation ("**Taking**"), whether or not the WLAN Equipment Space has been damaged or taken, and (a) substantial alteration or reconstruction of the Conference Centre shall, in Addison's sole opinion, be required, or (b) the Casualty is not covered by Addison's insurance, Addison may terminate this Agreement by notice to Sprint within 60 days after the date of the Casualty or transfer of physical possession in connection with a Taking. If (i) any portion of the WLAN Equipment Space or the Conference Centre is damaged by a Casualty or Taking, (ii) as a result of the damage, Sprint's operations are materially and adversely affected, and (iii) the Casualty or Taking damage cannot be repaired within 60 days after the occurrence, Sprint may terminate this Agreement by notice to Addison within 30 days after the Casualty or transfer of physical possession as a result of a Taking. If, after a Casualty or Taking, this Agreement is not terminated, Addison may commence and proceed to restore the Conference Centre; but in no event shall Addison be required to spend more than the insurance proceeds or condemnation award actually received by Addison in connection with such Casualty or Taking or to replace any portion of the WLAN Equipment. Upon completion of Addison's work, Sprint shall restore the WLAN Equipment. Sprint Waives the right to assert any Claim for the Taking of any right or interest under this Agreement. Sprint

Waives all Claims against Addison Parties arising, or alleged to arise, from inconvenience or annoyance to Sprint or injury to Sprint's business or to the WLAN Equipment as a result of Casualty or Taking damage or repairs.

**15. Transfer.**

(a) **Definitions.** "*Transfer*" means, as to the party involved, any voluntary or involuntary, direct or indirect, assignment, pledge, conveyance, or encumbrance of this Agreement, any interest herein, or any rights hereunder, including any change of control of ownership interests of a party, liquidation or dissolution of a party, merger or consolidation of a party with or into another entity, or, as to Sprint, any sublicensing, any subcontracting of any services provided (or to be provided) by Sprint, or any related operating rights. The term "*Control*" for purposes of this Paragraph means the ownership of 51% or more of the voting interests in the entity in question. The term "*Affiliate*" with respect to either party means any person or entity Controlling, Controlled by, or under common Control with such party.

(b) **Prohibition upon Sprint.** Except as permitted below, Sprint shall have no right to and shall not Transfer this Agreement without Addison's prior written consent, which may be withheld, in Addison's sole and absolute discretion. Sprint may assign Sprint's interest in this Agreement without Addison's prior consent to (A) an Affiliate or (B) any entity that succeeds to all or substantially all of its assets, whether by merger, sale, or otherwise, provided that (i) on the date of such assignment Sprint is not in default under this Agreement, (ii) on the date of such assignment the assignee has a total net worth that is equal to or greater than that of Sprint on the date of this Agreement, (iii) the Transfer is not intended to evade the prohibition contained in the first sentence of this paragraph (b), (iv) the assignee's intended use of the WLAN Equipment Space falls within the Permitted Uses contained in this Agreement, (v) neither assignee nor any Affiliate of assignee is involved in litigation with Addison, and (vi) Sprint gives Addison notice setting forth a reasonable description of the transaction and the name and address of such assignee at least 30 days prior to the effective date of the proposed assignment. Any purported Transfer by Sprint in violation of this paragraph will be null and void, and will constitute an incurable default under this Agreement.

(c) **By Addison.** Addison may Transfer this Agreement and the right to receive payments hereunder to any person except a competitor of Sprint; and Sprint will, upon notice of any Transfer by Addison, make all payments directly to Addison's Transferee.

**16. Liability.** No Addison Party will have any personal liability under this Agreement.

**17. Miscellaneous Terms.**

(a) **Notices.** All notices, requests, demands, consents, approvals, reports and other communications hereunder must be in writing and delivered by hand, reputable overnight courier or certified mail (return receipt requested), postage prepaid, as follows:

To Addison:

Addison Conference and Theatre Centre  
15650 Addison Road  
Addison, TX 75001-3285  
Attn: City Manager

To Sprint:

Sprint National Lease Management  
6391 Sprint Parkway  
Mailstop: KSOPHT0101-Z2650  
Overland Park, KS 66251-2650  
Attn: Sprint PCS Real Estate Attorney

With a Copy To:

Attn: R. Wesley Dittmer  
Sprint PCS Business Development  
6160 Sprint Parkway  
Mailstop: KSOPHI0414  
Overland Park, KS 66251  
Fax: (913) 523-0041

(b) **Entire Agreement.** This Agreement and the Attachments appended hereto and incorporated herein by reference contains the entire agreement of the parties regarding this Agreement. There are no representations, warranties or promises between the parties not contained in this Agreement. No amendment or termination of this Agreement will be effective, in whole or in part, unless in writing and signed by the party against whom enforcement is sought.

(c) **Governing Law, Venue.** The construction, performance and enforcement of this Agreement are governed by the law of the State of Texas; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions will not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. Venue for all legal actions shall be instituted and maintained in Dallas County, Texas.

(d) **Interpretation.** Any invalidated provision of this Agreement will be severed from, and will not impair the validity of, the remainder of this Agreement. Time is of the essence with respect to each covenant contained in this Agreement. No provision or breach of this Agreement will be deemed Waived, except by the consent of the party against whom the Waiver is claimed. Any Waiver of any right under, or breach of, this Agreement will not be deemed a Waiver of any other right or breach. Any demand for or

acceptance of any partial payment or partial performance under this Agreement will not be a Waiver of either the underlying obligation or breach thereof, unless otherwise expressly agreed in writing. This Agreement will be binding on the successors, permitted assigns, heirs, executors, and administrators of the parties to this Agreement.

(e) **License Only; No Joint Venture.** This Agreement is merely a license to use the WLAN Equipment Space for the purposes and in the manner provided by this Agreement and does not create a leasehold estate. The relationship of parties created by the Agreement is that of licensor and licensee, and not that of employer/employee, owner/agent, a partnership, joint venture, joint enterprise, or any other relationship.

(f) **Agreement Subject to Rules.** This Agreement shall be and is subject to any and all ordinances, laws, rules, regulations, and policies of Addison or any other governmental authority or agency with appropriate jurisdiction, as the same exist on the Effective Date or as amended, modified, or adopted after the Effective Date.

(g) **Incorporation of Premises.** The above and foregoing premises (Background) to this Agreement are true and correct and are incorporated herein and made a part of this Agreement for all purposes.

(h) **No Third Party Beneficiaries.** This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

(i) **Authorized Signatures.** The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

(j) **No Recording.** Sprint will not record this Agreement or a memorandum of this Agreement.

(k) **Execution of Agreement.** This Agreement will become effective as of the Effective Date.

(l) **Waiver of Jury Trial.** EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY COURT ACTION ARISING AMONG THE PARTIES, WHETHER UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT, AND WHETHER MADE BY CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR OTHERWISE. If for any reason the jury waiver is held to be unenforceable, the parties agree to binding arbitration for any dispute arising out of this Agreement, or any claim arising under any federal, state or local statutes, laws or regulations, under the commercial rules of the American Arbitration Association and 9 U.S.C. Section 1 et. seq. The agreement of each party to waive its right to a jury trial will be binding on its successors and assignees.

(m) **"Includes" and "Including".** For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration,



and use of the terms does not create a presumption that components not expressed are excluded.

**18. Addison Marks and Sprint Marks.** Nothing in this Agreement grants Sprint the right to use any trademarks, trade names, logos or other intellectual property rights proprietary to Addison ("Addison Marks"). If Sprint is granted a right to use Addison Marks, Sprint shall do so only in strict compliance with Addison guidelines provided by Addison.

Nothing in this Agreement grants Addison the right to use any trademarks, trade names, logos or other intellectual property rights proprietary to Sprint ("Sprint Marks"). If Addison is granted a right to use Sprint Marks, Addison shall do so only in strict compliance with Sprint guidelines provided by Sprint.

**19. Confidential Information.**

(a) **General.** Each party acknowledges that while performing its obligations under this Agreement it may have access to Confidential Information of the other party. "Confidential Information" means (a) the discussions, negotiations and proposals related to this Agreement (but not this Agreement) which have been clearly marked or identified as confidential, and (b) any information exchanged in connection with this Agreement concerning the other party's business which has been clearly marked or identified as confidential, including tangible, intangible, visual, electronic, written, or oral information, such as (i) trade secrets, (ii) financial information and pricing, (iii) technical information, and (iv) business information, including customer data. Confidential Information does not include information that is (A) rightfully known to the receiving party or its representatives or agents before the receiving party's first receipt of such information from the disclosing party ; (B) independently developed by the receiving party without any reliance on the disclosing party's Confidential Information; (C) part of the public domain or is lawfully obtained by the receiving party from a third party not under an obligation of confidentiality; (D) required to be disclosed by law or legal process, so long as the receiving party uses reasonable efforts to cooperate with the disclosing party in limiting disclosure; or (E) free of confidentiality restrictions by agreement of the disclosing party. In addition to the above, Confidential Information does not include such information which is required to be disclosed pursuant to the direction of the Texas Attorney General under the Texas Public Information Act, Chapter 552, Tex. Gov. Code, as amended or superseded.

(b) **Confidentiality.**

(i) The receiving party may use the Confidential Information only to perform its obligations under this Agreement. The receiving party must use the same care to avoid unauthorized use, including disclosure, loss or alteration, of the disclosing party's Confidential Information, as it provides to protect its own similar confidential information, but in no event will the receiving party fail to use reasonable care to avoid unauthorized use, including disclosure, loss or alteration, of the disclosing party's Confidential Information.

(ii) Either party may disclose the other party's Confidential Information to its Affiliates, officials, officers, employees, agents, advisors, contractors and legal representatives, if they have a need to know and an obligation to protect the Confidential Information that is at least as restrictive as this Agreement. Notwithstanding the foregoing, Sprint acknowledges that Addison is required to make this Agreement available for public review and discuss the terms of this Agreement at a public forum to comply with the laws applicable to the governance of Addison. This provision is not intended to restrict Addison from complying with its duties and obligations under any applicable state and local laws and any actions taken in furtherance of such compliance will not be a breach of this provision. Any discretionary disclosures of Confidential Information not required by law will be subject to this Section 19.

(iii) To the extent permitted by law, upon the termination or expiration of this Agreement, or upon written request, the receiving party will return or destroy, at its option, all Confidential Information of the disclosing party. At the reasonable request of the disclosing party, the receiving party will furnish an officer's certificate certifying that the Confidential Information of the disclosing party's Confidential Information not returned has been destroyed.

(c) **Third Party Confidential Information.** Neither party will disclose to the other party any Confidential Information of a third party without the consent of the third party except as may be required by law in accordance with Section 19(b)(ii).

(d) **Injunctive Relief.** Each party agrees that the wrongful disclosure of Confidential Information may cause irreparable injury that is inadequately compensable in monetary damages. Accordingly, either party may seek injunctive relief in any court of competent jurisdiction for the breach or threatened breach of this Section in addition to any other remedies in law or equity.

The parties have entered into this Agreement as of the Effective Date.

TOWN OF ADDISON:

SPRINT:

**TOWN OF ADDISON**

**SPRINT SPECTRUM L.P.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: R. Wesley Dittmer

Title: Sr. Director, Business Development &  
Strategy

Date: \_\_\_\_\_

## **ATTACHMENT "A"**

### **INSURANCE REQUIREMENTS**

#### **SPECIFIC COVERAGE REQUIREMENTS**

1. Sprint shall maintain at its expense, in an amount equal to full replacement costs, all-risk property insurance (including, without limitation, sprinkler leakage and water damage) on all of its personal property located in the Conference Centre. In addition, Sprint shall maintain builders risk insurance with respect to its construction activities. Sprint shall, at Addison's written request, provide the Conference Centre with a current certificate of insurance evidencing compliance with this Section.
2. Sprint shall maintain in force, at its expense, during the Term, a policy of Commercial General Liability Insurance issued by an insurance company licensed to do business in the state where the Conference Centre is located, naming Addison as an additional insured, with a combined single limit of \$3,000,000 for injury or death or property damage and excess "Umbrella" liability coverage of not less than \$5,000,000.
3. Sprint shall maintain in force all required workers compensation or other similar insurance pursuant to all applicable state and local statutes.
4. Notwithstanding anything to the contrary herein, the parties hereto release each other and their respective agents, employees, successors and assignees from all liability for damage to any property that is caused by or results from a risk which is required to be insured against by property insurance under this Agreement, or which would normally be covered by all risk property insurance, without regard to the negligence or willful misconduct of the entity so released.



**Council Agenda Item:       #R7**

**SUMMARY:**

This item is to request the Council's approval of a contract with the AriaMedia to provide web professional services to the Town. A copy of the contract is attached.

**FINANCIAL IMPACT:**

Budgeted Amount:     \$36,000

Cost:                   Not to exceed \$36,000 annually

**BACKGROUND:**

AriaMedia is an Addison based company, which has been helping the Town to maintain a strong web presence on the Internet community. They redesigned both the ci.addison.tx.us and the addisontexas.net web sites. We have been extremely pleased with the quality of their work, their dedication and more importantly their quick response to the Town's ongoing demands on a short notice. However, AriaMedia's rapid growth and its commitment to the clients who maintain an annual maintenance contract with them, is preventing them from being as responsive as the Town expects them to be. With the GSC (Guaranteed Services Contract) agreement, AriaMedia is committed to block time each week to insure that the needs of Addison can be met within a few days notice. Under this agreement the Town will pay AriaMedia quarterly in advance for a guaranteed number of hours (maximum of 75 and \$120 per hr) of AriaMedia's services. In exchange for such quarterly payment, AriaMedia provides web application development, programming, web and print design, marketing and branding services. Also, under this agreement, each quarter's "Unused Hours" (hours or any portion thereof which were contracted for but not used by the Town during the quarter) will be refunded as a credit towards the Town's next invoice. The following formulae shall apply:

At the end of a quarter,

1. If The Town has used 25 hours or less of Services, it shall be entitled to refund of 75% of Unused Hours for that quarter.
2. If The Town has used 26 to 50 hours of Services, it shall be entitled to a refund of 50% of Unused Hours for that quarter.
3. If The Town has used 51-75 hours of Services, it shall be entitled to a refund of 25% of Unused Hours for that quarter.

**RECOMMENDATION:**

Staff recommends that the Council authorize the City Manager to enter into a contract with AriaMedia inc. for professional services in an amount not to exceed \$36,000.

## CONSULTING SOLUTIONS & SERVICES AGREEMENT

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**Parties:**

AriaMedia Corporation  
14679 Midway Road, Suite 219  
Addison, TX 75001

Town of Addison, Texas ("Client")  
PO BOX 9010  
Addison, TX 75001

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AriaMedia Corporation, a \_\_\_\_\_ corporation ("AriaMedia"), provides consulting, creative and development services related to the analysis and design of computing applications. The Town of Addison, Texas ("Client") wishes to enter into this Agreement regarding the provision of such services by AriaMedia to Client, under the terms and conditions of this Service Agreement ("Agreement") and any Statement of Work (as hereinafter defined).

The Parties may enter into additional agreements, such as a Referral Partner Agreement, Guaranteed Services Contract, or a work order/Statement of Work (hereinafter sometimes referred to as a "Statement of Work"). This document will govern the overall relationship between Client and AriaMedia; however, to the extent of any conflict between this Agreement and a Statement of Work, the terms of the Statement of Work shall control. Any amendment hereto (whether a stand-alone amendment or part of an additional agreement) will be in writing, signed by both Parties and, unless otherwise specified, will apply to a specific project only. The following terms and conditions shall apply to the services provided by AriaMedia to the Client:

### 1. PROJECT SCOPE

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#### **1.1 Provision of Qualified Personnel; Quality of Work**

AriaMedia will provide qualified personnel to perform consulting, provide solutions, reporting and other Deliverables as required and set forth in the "Statement of Work and/or Work Order" executed by AriaMedia and Client. Such personnel shall be trained and skilled in the provision of such services consistent with commercially accepted best practices. AriaMedia warrants and represents that it has the skills, qualifications, expertise and experience necessary to perform its services with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for others. AriaMedia represents and warrants that all of its work shall be prepared in a good and workmanlike manner and with professional diligence and skill; that any product provided by AriaMedia to Client will function for its intended use and purpose.

#### **1.2 Team Composition**

AriaMedia has sole authority to assign specific staff member(s) to Client's account, and to replace them if necessary (e.g. due to resignation, undue hardship, etc.) with an employee of an equal skill level, unless otherwise agreed.

### **1.3 Non-solicitation**

During the period of the Service Agreement and for 12 months afterwards, Client and AriaMedia will not actively solicit for hire each other's employees unless both agree in writing that certain individuals may be extended job offers.

## **2 WORKING ARRANGEMENTS**

### **2.1 AriaMedia's Role**

AriaMedia is an independent contractor, and is not an agent, partner, or legal representative of Client for any purpose, and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a partnership, a joint venture, a joint enterprise, or an agency relationship. AriaMedia shall be solely responsible for all wages, salaries and other amounts due its employees, contractors, or subcontractors under this Agreement. AriaMedia shall be responsible for all reports and obligations respecting its employees concerning social security, income tax, unemployment insurance and similar matters. AriaMedia is not authorized to make any contract, agreement, warranty or representation for or on behalf of Client unless specifically authorized in writing by Client.

### **2.2 Right to Subcontract**

AriaMedia maintains the right to subcontract its services to be provided hereunder to individuals or third-party organizations whom AriaMedia reasonably determines is qualified to perform such services. AriaMedia shall give Client prompt written notice of any such subcontract. AriaMedia shall make any such subcontract subject to the termination provisions of this Agreement, and such subcontract shall include the same termination provisions.

### **2.3 Time Estimates**

Client agrees to provide access and availability, including its personnel, computer hardware and software, marketing and branding collateral and locations, as reasonably requested in advance by AriaMedia, during normal working hours unless otherwise agreed by the Parties. All production will be completed during a 40-hour standard work week unless otherwise agreed by the Parties. Should alterations be made to the scope of the project by the Client or should Client or its personnel not be reasonably available to AriaMedia, these timelines will be revised and the completion date of the project may be amended.

### **2.4 Travel**

Should travel be a requirement during the course of the working relationship, AriaMedia will bill travel time at its lowest consulting rate defined in Section 3.7. AriaMedia will bill no more than 8 hours in a 24 hour time period solely for travel. Individuals traveling on behalf of AriaMedia usually receive a per diem allowance of up to \$40 per day (more in certain major metropolitan areas). A per diem charge will be billed to the Client on an actual cost basis and AriaMedia will submit detailed expense reports if requested by the Client. AriaMedia does not bill for travel within the Dallas metroplex.

### **2.5 Correspondence**

All action items, etc. must be in writing. Email correspondence from Client to AriaMedia will suffice to provide notice to AriaMedia of such action items.

## **2.6 Work Completion & Warranty**

For each work order or statement of work completed to Client's satisfaction, both parties will sign a "Project Completion Document" attesting that the specific project has been completed. Client's execution of this document constitutes Client's acceptance of the completed project and certifies that no further work remains outstanding to complete the project. For 60 days following execution of a Project Completion Document, AriaMedia warrants (i) that any product provided to Client will perform in accordance with its specifications and standards, and (ii) the product or work produced to be free of defects and errors and will correct at AriaMedia's sole cost and expense any such defect or error found by Client and brought to AriaMedia's attention within that time frame. After 60 days, AriaMedia will perform any work requested by Client under AriaMedia's defined service rates as outlined herein.

## **3 PAYMENT FOR SERVICES**

AriaMedia offers the following two methods of project costing. Your work order or project agreement will specify which project costing method is to be used.

### **3.1 Hourly Fee Work**

AriaMedia will perform defined services at an hourly rate which shall be set forth in a Statement of Work or Work Order. Hourly fee work will be accompanied by a Work Order.

#### **3.1.1 How Billed**

AriaMedia will present bi-weekly invoices for work provided with detailed time reports for all personnel who work on a project, a detailed description of the work performed for the period of time covered by the invoice, true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and any such additional documents or materials as Client may request in connection with the invoice and/or the compensation paid to AriaMedia).

#### **3.1.2 Expenses**

Reasonable expenses, if agreed to in the Statement of Work, will be recorded daily by AriaMedia and included with invoices for services. In connection with travel, AriaMedia will be reimbursed in accordance with AriaMedia's own internal travel policy, as applied to its own staff traveling on internal AriaMedia matters (also see Section 2.4 above).

### **3.2 Fixed Fee Work**

AriaMedia will perform defined services for a fixed fee when the Statement of Work applicable to the project expressly so designates.

#### **3.2.1 What the Fee Covers**

The fee set forth in a Statement of Work will cover only the specific tasks, expenses, and deliverables the Statement of Work defines as included within the fee. All requirements by AriaMedia and Client must be in writing, signed by both Parties. Regardless of the time required to complete the project defined in the Statement of Work, AriaMedia shall charge no more than the amount specified in the "Not to Exceed" statement included in that document, unless specifically agreed otherwise by the Parties. (Changes, amendments or other revisions made



by Client to the scope of services to be provided by AriaMedia after the project begins may increase or decrease AriaMedia's charges. Any such changes must, however, be agreed in writing by both Parties. See Section 3.3 below.)

#### **3.2.2 How Billed**

AriaMedia will present invoices for fixed fee work as required by the applicable Statement of Work at intervals specified in the Payment section below. Such invoices shall include a detailed description of the work performed for the period of time covered by the invoice, true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and any such additional documents or materials as Client may request in connection with the invoice and/or the compensation paid to AriaMedia.

### **3.3 Modifications**

Any modifications to a Statement of Work or work order may be made only in writing, executed by an authorized agent of AriaMedia and Client. Additional tasks defined in any such modification shall be presumed to be performed on a time and materials basis, unless otherwise agreed in the document describing the modification.

### **3.4 Expenses**

Reasonable expenses, if agreed to in the Statement of Work, will be recorded daily by AriaMedia and included with invoices for services. AriaMedia will be reimbursed in accordance with AriaMedia's travel policy (See Section 2.4), if agreed to in the Statement of Work.

### **3.5 Sales Taxes**

AriaMedia's fees and estimates do not include sales or use tax unless specifically stated. Client shall pay, or reimburse AriaMedia for, the gross amount of any such tax applicable to the price, sale or furnishing of any services or associated materials hereunder, or to their use by Client or AriaMedia for the sole benefit of Client.

### **3.6 Payment and costs**

Client will be billed in the manner described in the Statement of Work or Work Order and as described above. Client has the right to approve any changes to cost prior to work being performed.

AriaMedia will issue time reports for all personnel who worked on a project to Client on a bi-weekly (every other week) basis. If a deposit is required, once the sum of the hours multiplied by the line-item service rate exceeds the deposit amount, AriaMedia will invoice Client on a bi-weekly basis for the hours worked during that period, plus applicable taxes, if any. Invoices shall be due and payable 30 days after the Client's receipt of an invoice. Overdue invoices bear interest at the lesser of 1% per month, or the highest rate permitted by law.

### **3.7 Rates**

Rates are subject to immediate change with written notice to Client, subject, however, to the terms of any Statement of Work.

Rate	Service Description
\$125	Creative Design & Graphic Arts Multimedia – Basic (Flash, Animation)

	Consulting – General Quality Assurance
\$150	Multimedia – Advanced (Shockwave, Video production) Development & Programming Architecture and Functional Design Project Management

## 4 INTELLECTUAL PROPERTY RIGHTS

### 4.1 AriaMedia Software

AriaMedia Software shall be defined as software AriaMedia has written and developed that is not unique to Client, does not express or rely upon any of Client's proprietary data for its effectiveness, and which AriaMedia utilizes for the analysis of web site usability and user experience. All right, title and interest in the source code and object code for AriaMedia Software shall remain with AriaMedia and will be regarded as proprietary to AriaMedia.

### 4.2 Third Party Code

Third Party Code shall be defined as software acquired from a third party, the functioning of which is integral to the operations of the project as defined in a Statement of Work. Intellectual property rights and ownership of Third Party Code will be determined based on licenses obtained directly from the third party.

### 4.3 Deliverables

Unless otherwise specified in the Statement of Work, AriaMedia's deliverables will include: Proposal, Statement of Work and/or Work order, Requirements Specification, Solution Documentation, and Delivered Solution. Project Plans and Status Reports will be made available at Client's request. Source Code delivery is dependent upon the specific agreements detailed within the Statement of Work.

## 5 CONFIDENTIAL MATTERS

### 5.1 Confidentiality of Proprietary Information

During the course of this Agreement, the Parties will have occasion to exchange Proprietary Information, as defined below. Each will respect the confidentiality of the other's Proprietary Information, in accordance with the requirements of this section. For purposes of this section, each party is a "Provider" with respect to Proprietary Information it provides, and a "Receiver" with respect to Proprietary Information it receives.

### 5.2 What is Proprietary?

"Proprietary Information", for purposes of this Agreement, shall include Client reports prepared by AriaMedia for Client and any information identified in any particular Statement of Work as confidential or proprietary to either party, and such other information conspicuously marked "proprietary" or "confidential", before transmittal. It may also include information proprietary to a third party and which

has been conspicuously marked "proprietary" or "confidential", such as (but without limitation) AriaMedia' subcontractors or third party software suppliers.

### **5.3 When Proprietary Information Ceases being Proprietary**

.1 Proprietary Information shall not include information, whether or not labeled or identified as "confidential" or "proprietary", which: (1) is already or hereafter becomes publicly known or available (unless because of Receiver's breach of this agreement); (2) Receiver obtains it without restrictions from a third party who has the right to hold and to disclose it; (3) Receiver develops it independently, or already knew it at the time Provider gave it; (4) Provider provides it to anyone else without confidentiality limitations; (5) is rightfully known by the Receiver without restriction on use prior to its first receipt of such information from the Provider; or (6) is provided to the Receiver prior to the date of this Agreement and not clearly identified in writing as "proprietary" or "confidential", and which has been disclosed by the Receiver to a third party prior to the date of this Agreement. In addition, this Agreement is not Proprietary Information.

.2 Notwithstanding Section 5.4 or any other provision of this Agreement, disclosure of Proprietary Information shall not be precluded if:

(a) such disclosure is in response to a valid order of a court or other governmental body or entity of the United States, State of the United States, or any political subdivision thereof; provided, however, that the Receiver shall first have given notice to the Provider of such order;

(b) such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary;

(c) the Receiver received the prior written consent to such disclosure from the Provider, but only to the extent permitted in such consent.; or

(d) required to be disclosed pursuant to law, rule or regulation of any government or agency thereof, including, without limitation, the Texas Public Information Act, Chapter 552, Tex. Gov. Code, as amended or superseded.

### **5.4 Protection and Use**

Until three years after this Agreement ends, Receiver will not disclose Proprietary Information to any third party without the Provider's written consent, and will protect the Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, as Receiver uses to protect its own similar proprietary information. Receiver will use the Proprietary Information only for purposes consistent with the purposes of this Agreement.

### **5.5 Who May have Access to Proprietary Information**

Receiver may not disclose Proprietary Information to any person or entity, except to Receiver's officials, officers, employees, advisors, and consultants.

### **5.6 Obligation of Surrender**

To the extent permitted by law or regulation, upon request by Provider, Receiver shall surrender the original and any complete or partial copies of any Proprietary Information to Provider, or shall destroy all such originals and copies, and shall certify in writing signed by an officer of Receiver that no record of the requested

Proprietary Information has been retained, provided that no Proprietary Information which is part of a Statement of Work deliverable for which payment is made may be recalled by Provider.

Any obligation of confidentiality under this Agreement shall cease three years after the date of termination of this Agreement or if no termination date is cited, three years after the last day on which AriaMedia and Client maintained a business relationship.

## **6 TERM, TERMINATION, DEFAULT**

### **6.1 Term of Service Agreement**

This Agreement is effective on the date this Agreement is signed by the last of the parties hereto. It continues in effect, as the framework within which each Statement of Work will be handled, until terminated by Notice from either party or superseded by subsequent agreement. It continues in effect, as part of any existing Statement of Work, until the completion or earlier termination of the Statement of Work in question.

### **6.2 Term of Statement of Work**

Each Statement of Work shall continue until completed, or until terminated in accordance with its terms, unless earlier terminated for default or as otherwise set forth in the Statement of Work.

### **6.3 Termination**

Either party may terminate this Agreement at any time by giving to the other party at least ten (10) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished data, information and other materials and items (whether kept electronically, in writing, or otherwise) prepared by or in the possession of AriaMedia shall be promptly delivered to Client and be and remain Client's property. AriaMedia shall be paid for all work satisfactorily completed prior to the effective date of termination.

After receiving notice of termination from Client or upon giving notice of termination to Client, AriaMedia shall:

1. Stop its work in an orderly and expeditious manner, place no further subcontracts or orders in connection with this Agreement (except as necessary to complete the continuing portion of this Agreement, if any, as specified in the termination notice), and terminate all subcontracts to the extent they relate to terminated work ;
2. Deliver to Client in their then current state and condition all Client property, drawings, reports and other documents in AriaMedia's possession relating to the work;

3. Promptly take all other measures required to affect the orderly close out of AriaMedia's engagement (including the prompt and full settlement of all outstanding claims), and comply with the directions of Client in this regard.

#### **6.4 Force Majeure**

Neither AriaMedia nor Client shall be liable for any delay in performance or inability to perform due to acts or omissions of any civil or military authority, terrorist acts, acts of God, acts or omissions of the other party hereto, fires, strikes or other labor disturbances, equipment failure, capacity limitations in equipment provided by Client, fluctuations or lack of availability of electrical power, heat, light, air conditioning or telecommunications equipment, or any other act, omission or occurrence beyond AriaMedia's or Client's respective reasonable control.

#### **6.5 What Survives Termination**

Obligations of confidentiality, rights in work product, indemnity obligations, and rights and obligations to make payments due and owing, survive termination of this agreement.

### **7 INDEMNITY AND DAMAGES.**

#### **7.1 Indemnity**

AriaMedia will defend (with counsel acceptable to Client), indemnify, and hold harmless Client, its officials, officers, agents and employees, from and against any and all claims, liabilities, actions, causes of action, lawsuits, judgments, penalties, fines, damages, costs or fees, including, without limitation, attorney's fees and costs and expense of defense, arising out of or resulting from any act or omission of AriaMedia, its directors, officers, employees, agents, representatives, contractors, subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Agreement, or arising out of or resulting from any breach by AriaMedia of any provision of this Agreement, or arising out of or resulting from any claim that any work or materials delivered to Client by AriaMedia pursuant to this Agreement violate the intellectual property rights of any other person or entity. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

#### **7.2 Content Liability**

AriaMedia is reliant upon Client for all information to be displayed within the desired application. Client assumes all liability resulting from the use of images and content provided by the Client.

### **8 OTHER MATTERS**

#### **8.1 Notice**

"Notice" means notice given as described herein. Notice will be given to the parties at the addresses designated on page 1 of this Agreement (except that if notice is hand-delivered to Client, such notice shall be delivered to the Town of Addison, Texas, 5300 Belt Line Road, Dallas, Texas 75254). Upon written notice to the other, a party can change its address. Notice shall be by either hand-delivery or



by certified mail, postage prepaid, return receipt requested, and properly addressed, and shall be considered effective on the date the notice is delivered (if delivered by hand) or the date the return receipt shows the document was accepted, refused, or returned undeliverable (if delivery is by certified mail).

## **8.2 Severability**

Each clause of this Agreement is severable. If any clause is ruled void or unenforceable, the balance of the Agreement shall nonetheless remain in effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties agree to seek to add as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

## **8.3 Non-waiver; Rights Cumulative**

A waiver of one or more breaches of any clause of this Agreement shall not act to waive any other breach, whether of the same or different clauses, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise expressly set forth herein.

## **8.4 Assignment**

Neither party shall have the right to and shall not assign, transfer, sell, or otherwise convey this Agreement or any rights, duties or obligations hereunder without the express prior written consent of the other party. Subject to the foregoing, each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the parties' permitted assignees or transferees.

## **8.5 Governing law, Jurisdiction**

This agreement is governed by the laws of the State of Texas; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. Any action brought between the parties may be brought only in the state or federal courts located in the city and county of Dallas, Texas and each party consents to such jurisdiction.

## **8.6 Authorized Persons**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

## **8.7 Amendment**

No amendment or other modification of this Agreement shall be valid unless pursuant to a written instrument referencing this Agreement signed by duly authorized representatives of each of the parties hereto.

### **8.8 "Includes" and "Including"**

For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

### **8.9 Time of the Essence**

Time is of the essence of this Agreement and in each provision contained in it. Each provision of this Agreement is agreed by the parties to be a material, necessary and essential part of this Agreement.

### **8.10 No Third Party Beneficiaries**

This Agreement is entered into for the sole benefit of the AriaMedia and Client and, where permitted above, their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

### **8.11 Integration**

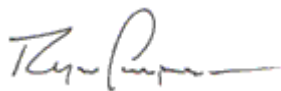
This Agreement, together with (a) each Statement of Work and/or Work Order between the parties and (b) any other document or documents executed by the parties which reference this Agreement, will be together considered the complete agreement between the parties with respect to the subject matter to which it pertains. This Agreement supersedes all prior agreements, written or oral. It may be modified only in writing signed by the original parties hereto, or by their successors or assigns.

## **9 SIGNATURES**

ARIAMEDIA CORPORATION

"CLIENT"

NAME\_\_\_\_\_



Signature

Signature

Ryan Thompson

Name Printed

Name Printed

President

Title

Title

Date Signed

Date Signed

**Parties:**

AriaMedia Corporation  
14679 Midway Road, Suite 219  
Addison, TX 75001

Town of Addison, Texas. ("Client")  
5300 Belt Line Road  
Dallas, TX 75254-7606

**1 GENERAL**

This Contract is to be effective on January 1, 2004 and will continue in effect until terminated by one of the Parties as provided herein. This Contract will serve as an addendum to the Consulting Solutions and Services Agreement ("CSSA") executed previously by the Parties (a true and correct copy of which is attached hereto), so that the terms and conditions of this Contract include the terms and conditions set forth herein and the terms and conditions of the CSSA.

The parties wish to enter into an agreement for the providing of services by AriaMedia to Client as follows:

For the term of this Contract, Client will pay AriaMedia quarterly in advance for a guaranteed number of hours of AriaMedia's "Services", as defined herein, as follows:

Contracted Item	Guaranteed Services Contract Hours per quarter	Discount Percentage	All Services Rate
<b>X</b>	<b>Maximum of 75</b>	<b>20%</b>	<b>\$9000 (120/hour)</b>

In exchange for such quarterly payment, AriaMedia shall provide "Services", defined as web application development, programming, web and print design, consulting, project management, marketing and branding. AriaMedia will respond to all Client requests and use its best efforts to initiate action on the next business day following the day it receives a request from Client, or if action cannot be initiated on the next business day, then as soon thereafter as possible, but in any event no later than the third business day following the day AriaMedia receives a request from Client.

If in any quarter during the term of this Contract (the first such quarter being the months of January 2004, February 2004, and March 2004) the number of hours of Services provided by AriaMedia hereunder approaches the maximum number of hours set forth above, AriaMedia will notify Client by at least e-mail and telephone, advising the approximate number of paid hours remaining in the quarter. Once the number of hours of Services exceeds the maximum shown in the chart above, AriaMedia will bill to Client any additional hours at its normal billing rate of \$150 per hour of development/programming and \$125 per hour of design, marketing or consulting.

No later than the 10<sup>th</sup> day following the end of each quarter during the term hereof, AriaMedia shall submit to Client in writing, to Client's satisfaction, a detailed time report for such quarter for all persons who provided Services during such quarter, which report shall include, without limitation, a description of each of the Services provided and the number of hours or partial hours for such Services (the "Time Report"). Upon termination of this Contract, AriaMedia shall submit to Client, no later than the 10<sup>th</sup> day following the date of termination, a Time Report for the period

immediately preceding termination for which a Time Report has not previously been submitted; this obligation shall survive the termination of this Contract.

Each quarter's usage stands alone and may not be combined with another quarter. "Unused Hours" (hours or any portion thereof which were contracted for but not used by Client during the quarter) will be refunded (using the "All Services Rate" shown above) as a credit towards Client's next invoice. The following formulae shall apply:

At the end of a quarter,

1. If Client has used 25 hours or less of Services, it shall be entitled to refund of 75% of Unused Hours for that quarter.
2. If Client has used 26 to 50 hours of Services, it shall be entitled to a refund of 50% of Unused Hours for that quarter.
3. If Client has used 51-75 hours of Services, it shall be entitled to a refund of 25% of Unused Hours for that quarter.

Notwithstanding the foregoing, upon termination of this Contract, AriaMedia shall promptly pay (but in any event no later than the 30<sup>th</sup> day following the date of termination) to Client any funds received by AriaMedia from Client hereunder for which Services have not been provided by AriaMedia; this obligation shall survive the termination of this Contract.

Included within the amount paid by Client for each quarter at no additional charge are telephone consultations provided to Client by AriaMedia. Up to ten hours of basic meetings (progress reports, on-site consultations, new project discovery meeting, etc.) per quarter between the Parties is also included within the amount paid by Client for each quarter. Basic meetings do not include such things as training, design, and development work.

An invoice will be issued quarterly within 5 days of the beginning of each quarter and shall be payable within fifteen (15) days following Client's receipt of the invoice. AriaMedia will issue monthly time reports to client unless otherwise instructed. Reports will be generated within 5 days after the close of a month.

Once a Client pays for a quarter of services, if it wishes to terminate this Contract, AriaMedia will promptly (but in any event no later than the 10<sup>th</sup> day following the date of termination) refund to Client an amount of money equal to the total number of Unused Hours for that quarter times the hourly rate set forth above.

Either party may terminate this Contract by giving to the other party at least ninety (90) days written notice of such termination. AriaMedia shall be paid for all work satisfactorily completed prior to the effective date of termination. In the event of termination, all finished or unfinished data, information and other materials and items (whether kept electronically, in writing, or otherwise) prepared by or in the possession of AriaMedia shall be promptly delivered to Client and be and remain Client's property. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

## 2 SIGNATURES

ARIAMEDIA CORPORATION

"CLIENT"

NAME\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Ryan Thompson

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
President

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed



**Council Agenda Item: #R8**

**SUMMARY:**

Council approval is requested for the award of bid to Johnson Industries for the purchase and installation of (2) vehicle / equipment lifts for fleet services in the amount of \$44,945.00.

**FINANCIAL IMPACT:**

Budgeted Amount     \$45,000.00

Funds Available:     Facilities & Fleet Services Department Budget

Cost:                     \$44,945.00

**BACKGROUND:**

The fleet shops' current equipment lifts are the original lifts that were installed when the facility was built in 1980. Over the past twenty-three years they have served us well with routine maintenance performed on the hydraulics, cylinders, and pumps. On a recent maintenance repair to the cylinders it was noted that they are age worn and should be replaced. Additionally, the walls of the pit areas of both lifts are decaying and effecting the integrity and safety of the lift systems. Of recent, the current 12,000 lbs. vehicle lift has become completely inoperable and is no longer in use.

Bid information was sent out to 176 suppliers through the Purchasing Divisions' DemandStar system with 16 potential bidders downloading the specifications. (1) One bid was received from Johnson Industries a nationwide company that specializes in automotive products and services and has favorable references. Johnson's bid includes all materials, installation, electrical and haul off of old equipment.

**RECOMMENDATION:**

Staff recommends the Council award the bid to Johnson Industries for the purchase and installation of (2) vehicle / equipment lifts for fleet services.

MA

Vehicle Lift  
BID NO 04-05

#R8-2

DUE: December 2, 2003

2:00 PM

BIDDER	SIGNED	Cart Lift Total	Truck Lift Total	Bid Total	Future Kit
Johnson Industries	y	included	included	\$39,645.00	\$5,300.00

*Minok Suh*

---

Minok Suh, Purchasing Coordinator

*Corey Gayden*

---

Corey Gayden, Witness

**Council Agenda Item: #R9**

**SUMMARY:**

Approval of an agreement with RTKL to provide professional planning services to develop a strategic approach for the re-invigoration of Belt Line.

**FINANCIAL IMPACT:**

Budgeted Amount:	\$2,305,949 in bond funds is available for the Belt Line project
Cost:	\$54,000 for both Part A and B of the proposed process plus expenses which will not exceed \$5,000

**BACKGROUND:**

In February 2000 the voters approved \$11,000,000 for the redevelopment of Belt Line. At that time the project anticipated updating the Belt Line streetscape and moving the utilities to a less obtrusive location. Since the passage of that proposition staff has had a number of conversations regarding Belt Line as well as the UIL study and some of the initial thoughts regarding the redevelopment project have changed. Based on those conversations staff is proposing to contract with RTKL to assist the Town in developing the strategic approach to the reinvigoration of Belt Line. Staff believes that this process will ultimately provide a better utilization of resources rather than moving directly to the design phase. The proposal is divided into two parts, Part A and B, and designed in such a way that staff can implement both parts or end the process after Part A. Total cost for RTKL's services is \$54,000 for both parts A and B plus expenses that are anticipated not to exceed \$5,000. For your information and review attached is a copy of RTKL's proposal.

**RECOMMENDATION:**

Staff recommends approval.



July 3, 2003  
Revised October 21, 2003

~~(Hand Deliver at Meeting)~~

Ron Whitehead  
Town Manager  
Town of Addison  
5300 Beltline Rd.  
Addison, TX 75254

*Baltimore*

*Chicago*

*Dallas*

*London*

*Los Angeles*

*Madrid*

*Miami*

*Shanghai*

*Tokyo*

*Washington*

## **Re: Belt Line Re-invigation**

Dear Ron:

Thank you for taking time to drive me through the Belt Line Road corridor last week and discuss issues related to its reinvigoration. It was helpful to hear your thoughts and ideas; I believe we identified the pertinent issues and challenges facing such reinvigoration as well as an appropriate process for exploring such a program. As we discussed, I am presenting this proposed process through which we may jointly investigate solutions to these challenges.

## **UNDERSTANDING**

Throughout the Town of Addison's history, Belt Line Road has been a critical corridor to the community's economic health, its programmatic amenities, and its overall character identity. Development has occurred throughout each of the major economic expansions over the last 40 years along the Corridor and has created a rich and diverse collection of restaurants, service uses and commercial facilities. As is common with such a successful history, not all of this development has contributed successfully to the collective identity of the Corridor. As such development is comprised of multiple uses across fragmented land ownership patterns, a strategy aimed at the reinvigoration of these impeding areas requires a proactive and creative approach aimed at promoting a win-win for the community and property ownership alike.

RTKL is pleased to present this proposal to provide professional planning services aimed at devising such a strategic approach. We understand that the initial thrust of this effort will focus primarily on the first quarter mile west of the Tollway. Due to the multi-faceted nature of this effort we are proposing a highly flexible and interactive process to accommodate your needs. The following is a step-by-step outline of this proposed process.



## **SCOPE OF SERVICES**

### **PART A**

#### Task 1: Data Assembly

Working closely with you and your staff, we will assemble necessary data to facilitate our collected effort. This will include current aerial photographs, plat maps, and surveys showing the collection of building footprints, property lines, existing curb locations, etc. from Midway to the Tollway.

#### Task 2: Opportunities/Constraints Worksession

We propose to meet in a 3-4 hour worksession with you and your staff to retrieve your collective knowledge of specific details related to existing ownership, proposed public and private improvements, the historical context, infrastructural challenges, etc. within this portion of Belt Line Road. To facilitate our discussion, we will work over a large composite drawing (taken from the information gathered in the previous task) of the corridor writing notes on specific properties and identifying the apparent opportunities and constraints for specific properties as well as the corridor in general.

Through this discussion, we will collectively identify and prioritize three specific challenges to be addressed. These may include, among others, such issues as:

- How to create points of activity along the corridor's experience to provide heightened interest and activity.
- How to bring visual order to corridor's appearance to overcome its unorchestrated collection of civil, landscape, architectural and programmatic improvements, (despite each of these improvements having individual quality).
- How to create stronger physical closure along the corridor to mitigate the "missing teeth" effect created by restaurant pad sites.
- How to promote the redevelopment of key blocks (including the first southern block west of the Tollway). This would include discussing likely uses, likely assemblies, potential access improvements, parking strategies, and potential developers.
- How to guide the potential of a western anchor created by the Papadeaux ownership.
- How to guide the potential for a transit-oriented anchor in the area currently defined by warehousing and storage uses.
- How to guide the subtle identity and branding of the package liquor sales corridor.
- How to allow a stronger transition to the corridor along the north-south roads.
- Potential improvements to the Belt Line Road street section and its related streetscape.



### Task 3: Concept Plans

Based on the information gathered in the previous task, we will prepare two to three alternatives (up to 9 plans) for each of the prioritized challenges identified in the worksession. These alternatives will depict the necessary physical improvements, use assemblies, ownership and partnering opportunities, proposed building and parking layouts, etc. related to the solutions for each challenge. These plans will be prepared at a scale suitable to discuss the details behind the reinvigoration approaches and may include photographic imagery of key concepts depicted in the plans.

## **PART B**

### Task 1: Issues Worksession

In order to refine these concepts and related strategies, we propose an all-day worksession that would be designed to be highly interactive and inclusive of multi-disciplined input. The worksession is proposed to be organized into a series of meetings focused on a particular concept/topic. As such, it is anticipated that certain sessions may include additional professionals/consultants, key property owners, policymakers, community leaders, developers, brokers, etc. as you deem appropriate. It is intended each session will be managed to collectively arrive at a refined approach for each prioritized challenge.

### Task 2: Refined Concept Plans

Based on the information gathered in the previous task, we will refine the three alternative concepts in illustrative masterplans. These plans will identify the build-out conditions for each concept and will identify issues of phasing, program, infrastructure improvements, etc. necessary for the implementation of each development approach. They will be prepared in poster-sized board and/or powerpoint format suitable for public presentation.

### Task 3: Presentation

If so desired, RTKL will assist you in a presentation of these concepts to any combination of policy-makers, property owners, the development community, general public, etc. to begin to build awareness and support for these ideas and related efforts.

### ***Additional Services***

If deemed appropriate, and under separate contract, these plans could be taken studied at a higher level of detail to include the following:

- The “market testing” of each concept’s development program by a market consultant.
- Pricing of the infrastructural improvements identified by each concept.
- Financial analysis of each concept from both the City’s fiscal perspective as well as an owner/developer’s investment perspective.
- Artist’s renderings for each concept, computer “fly-through” of the conceived Belt Line corridor, identity and branding collateral, etc.



- Packaging of these concepts and related analysis in marketing documents that can be taken to the marketplace to generate interest and implementation.

### **COMPENSATION FOR PROFESSIONAL SERVICES**

We estimate the scope of services (excluding additional services) outlined above can be completed in two 4-week time periods, depending on meeting scheduling and time taken for your review and authorization. The professional fee for this assignment is \$27,000 for Part A and \$27,000 for Part B, excluding the normal reimbursable expenses detailed below.

#### **Assumptions**

- This estimate assumes a maximum of a 6-to-8 week work plan.
- Additional services performed by RTKL outside the work plan defined in this proposal will be billed on an hourly basis. No additional services will be performed without the written approval of the Client. Such services shall be based on fee estimates established by RTKL Associates Inc.
- This scope and estimate assumes three formal meetings. Presentations to other interest groups, third-party developers, regulatory authorities, etc. would be charged at our average hourly rates as authorized by the Client.
- It is understood that additional consultants such as real estate, traffic, civil, zoning, etc. are not included in this contract. Their scope and fees shall be negotiated and managed separately from this contract.
- It is our understanding that the City will make available maps, surveys, civil and traffic engineering data deemed relevant by the design team and will obtain additional information as required.
- It is also understood that the work described herein is for the purpose of strategic planning; detailed site design necessary for site construction is not included as part of our direct scope.

#### **Reimbursable Expenses**

Reimbursable Expenses are defined as those actual expenditures incurred directly in connection with the project. These expenses shall be billed at cost plus 10%. Reimbursable Expenses shall include, but are not limited to the following:

- Telephone; Facsimile
- Postage and Delivery
- Reproductions; Photocopies; Printing; and Computer Plotting
- Transportation; Travel and per diem expenses
- Photography
- Additional Expense over normal hourly rates for Overtime Work approved by Client in advance of the work being performed.



### **Retainer Policy**

RTKL's Board of Directors has instituted a policy requiring retainers on all new projects prior to starting work. The retainer required for this project is **\$6,000**. The retainer payment will be applied to the project's final invoice.

### **BILLING AND PAYMENT**

RTKL's customary practice is to bill on a monthly basis for the work completed in the prior month. Fee invoices will be based on the percentage of work completed in the prior month.

Compensation for Services and Expenses shall be due and payable within thirty (30) days of the invoice date. Invoices over sixty (60) days will be charged interest at the Bank of America prime rate plus two (2) percent. If unpaid invoices become more than sixty (60) days overdue, RTKL may, upon seven (7) days written notice to the Client, contact the Client directly for payment and/ or stop work until payment is received. In the event of non-payment, Client shall reimburse RTKL for any attorney fees incurred to collect the unpaid receivables.

All payments, including the retainer, may be wired directly to the account of:

Bank of America, N.A.  
10 Light Street  
Baltimore, MD 21202 USA  
ABA number 052001633  
Account number 3930249666  
Reference: **Belt Line Re-invigoration**

### **CONTRACTS**

RTKL fees are based upon the Detailed Scope of Services and RTKL's Standard Form of Agreement Between Client and Architect. All Client generated contracts will require review and acceptance by RTKL's legal counsel before any work may proceed.

### **TERMINATION**

This Agreement may be terminated by either party at anytime with or without cause by written notice. Termination shall be effective seven (7) days after date of notice. Upon termination, all invoices presented by RTKL for Services and Expenses for periods prior to the date of termination shall become immediately due and payable. Failure of the Client to make payments to RTKL under this Agreement shall be cause for termination. In the event of a suspension of Services, RTKL shall have no liability for any damages to Client incurred because of such suspension. Termination or suspension of Services by RTKL shall in no way relieve Client of compensating RTKL for Services performed and Expenses incurred to the date of the termination.

Ron Whitehead  
**Re: Belt Line Re-invigoration**  
July 3, 2003  
Revised October 21, 2003  
Page 6

**RTKL**

**AGREEMENT**

By executing and returning a copy of this letter, the Town of Addison agrees to the terms of this proposal and agrees to pay RTKL in accordance with those terms stated. We appreciate the opportunity to work with you and your staff on this exciting project. If you have any questions on this information, please call me at 214-871-8877. I look forward to speaking to you soon.

Sincerely,  
RTKL ASSOCIATES INC.



Paris M. Rutherford IV, AICP  
Vice President

PMR//

cc: Lance Josal  
Paul Shaw

Accepted By:  
TOWN OF ADDISON

**PART A \***

\_\_\_\_\_  
By: Ron Whitehead  
City Manager

\_\_\_\_\_  
Date

**PART B \***

\_\_\_\_\_  
By: Ron Whitehead  
City Manager

\_\_\_\_\_  
Date

\* RTKL will not proceed until written authorization is provided by the Town of Addison.

May 2003

**RTKL**

RTKL ASSOCIATES INC.  
Professional Rate Schedule  
by Classification

	<u>Hourly Rate</u>
Technical Assistant	\$ 45.00
Staff	60.00
Senior Staff Architect/Engineer/Planner	75.00
Project Architect/Engineer/Planner	90.00
Senior Project Architect/Engineer/Planner	110.00
Project Manager	125.00
Senior Project Manager	150.00
Vice President	225.00
Senior Vice President	250.00

NOTE: The above rates are subject to annual adjustments.



**RTKL ASSOCIATES INC.**

**SCHEDULE OF STANDARD REIMBURSABLE EXPENSES**

Reimbursable Expense are in addition to compensation for Basic and Additional Services and include expenses incurred by RTKL and RTKL consultants in the interest of the Project, including, but not limited to, the following:

1. Reproductions including but not limited to all Project printing of plans and specifications, and other Project related photocopying and photographic production;
2. Travel related costs for all Project matters including but not limited to Project meetings and construction administration matters, such as air and ground travel at commercial rate sustenance, automobile rental, overnight accommodation at a hotel/motel, tolls, parking, and mileage at the applicable IRS rate;
3. Telephone and facsimile transmission ("fax") charges related to Project matters including amount and time of long distance telephone calls and long distance fax connection charges;
4. Delivery of all project-related matters including express/overnight mail, courier charges;
5. Project meetings, including provision of the meeting room and any sustenance offered;
6. Renderings, models, and mock-ups requested by the Owner;
7. Insurance including professional liability insurance when the Owner requests additional coverage, specialty endorsements, or limits in excess of that normally carried by RTKL and RTKL's consultant;
8. Computer aided design and drafting (CADD) equipment time, when used in connection with the Project;
9. Legal fees of RTKL incurred in connection with review and revision of owners and lender's certifications, lien waivers, and similar documents presented to RTKL for execution, or in connection with collection of amounts due to RTKL from the Owner; and
10. Other costs, not described in categories 1 through 9 above, when requested by the Owner in connection with the rendering of RTKL's services for the Project.



**Council Agenda Item: #R10**

**SUMMARY:**

To consider approval of the contract for service between the Town of Addison and the Water Tower Theatre for a base amount of \$230,000 and a matching funds amount of up to \$150,000 for a total amount of \$380,000 as authorized in the FY 2003/04 Hotel Fund budget.

**FINANCIAL IMPACT:**

Budgeted Amount:    \$380,000.00

Cost:                    \$380,000.00

**BACKGROUND:**

During the FY 2003/04 budget process, the City Council approved a funding request for the Water Tower Theatre in the amount of \$380,000.

In order to receive the funded amount, the Water Tower Theatre shall provide the following services in FY 2003/04:

- Present a minimum of six (6) main stage productions.
- Provide recognition of the Town in all playbills printed in connection with the productions.
- Work with all hotels located in the Town to generate awareness regarding the theatre.
- Submit detailed quarterly financial statements and program results to the Town.

**RECOMMENDATION:**

It is recommended that the City Council approve a resolution authorizing the City Manager to enter into a contract with the Water Tower Theatre for a base amount of \$230,000 and a matching funds amount of \$150,000, for a total amount not to exceed \$380,000. This contract shall be subject to final review and approval by the City Attorney.

**Town of Addison**  
**Non-Profit Funding Request FY 2003/04**

#R10-2

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<b><i>GENERAL FUND:</i></b>		
Communities in Schools Dallas, Inc. ++	\$30,000	\$40,000
Senior Adult Services ++	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services ++	\$5,000	\$5,000
H.O.P.E. ++	\$5,000	\$5,000
The Family Place ++	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
<b>SUBTOTAL</b>	<b>\$ 84,000</b>	<b>\$ 96,500</b>
 <b><i>HOTEL FUND:</i></b>		
WaterTower Theatre	\$230,000	\$230,000
WaterTower Theatre "Matching Funds"	\$150,000	\$150,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts ++	\$8,500	\$8,500
Dance Council ++	\$6,700	\$6,600
Repertory Company Theatre ++	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
<b>SUBTOTAL</b>	<b>\$ 418,900</b>	<b>\$ 430,100</b>
 <b>GRAND TOTAL</b>	 <b>\$ 502,900</b>	 <b>\$ 526,600</b>

\* Indicates a first time request

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

++ Indicates that the agency's funding amount was approved by City Council on 11/25/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH THE WATER TOWER THEATRE TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. The Contract for Services by and between the Town of Addison, Texas and the Water Tower Theatre for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Mayor R. Scott Wheeler

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney

OFFICE OF THE CITY SECRETARY

RESOLUTION NO. \_\_\_\_\_

**STATE OF TEXAS**

§

**CONTRACT FOR SERVICES**

**COUNTY OF DALLAS**

§

§

This Contract is made and entered into as of the 1st day of October 2003 by and between the Town of Addison, Texas (the "Town") and the WaterTower Theatre Incorporated ("WTT"), a Texas non-profit corporation with its principal place of business in Addison, Dallas County, Texas.

**WHEREAS**, WTT is a Texas non-profit corporation which exists for the purpose of the development and advancement of theatre and drama in the Town as well as to promote theatrical activities through numerous productions throughout the year; and

**WHEREAS**, WTT's productions and work attract tourists to and encourages tourism in the Town, and the Town has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

**WHEREAS**, it is the Town's desire to encourage and promote the arts, including, without limitation, theatre; and

**WHEREAS**, the Town is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, theatre, and desires to encourage and promote the arts (including theatre) through the execution of this Contract for Services.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town and WaterTower Theatre Incorporated do hereby contract, covenant and agree as follows:

**I. TERM**

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

**II. SERVICES**

WTT shall provide the following services:

- (a) Presentation of a minimum of six (6) main stage productions.
- (b) Recognition of the Town in all playbills printed in connection with the productions.

(c) Work with all hotels located in the Town to generate awareness regarding the theatre.

(d) Submit detailed quarterly financial statements and program results to the Town within thirty (30) days after the end of the preceding quarter listing the expenditures made by WTT with the revenues received pursuant to this Contract.

### **III. COMPENSATION**

The Town agrees to pay WTT as base consideration the sum of Two Hundred Thirty Thousand and No/100 Dollars (\$230,000.00) "Base Consideration" from its revenue derived from the Town's hotel occupancy tax, provided that the minimum number of shows are actually presented and performed as set forth in this Contract. Payment of the Base Consideration to WTT will be made by the Town on or before December 5, 2003. In addition to the Base Consideration as provided above, the Town agrees to pay to WTT "Matching Funds" in an amount up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). A description of what constitutes Matching Funds and the process for the payment of such Funds is set forth in Exhibit A attached hereto and incorporated herein.

In the event the Town terminates this Contract as provided for in Section V, the Town shall not be liable to WTT for the payment of any portion of the unpaid funds. The Town also reserves the right to pursue all legal remedies against WTT for funds previously paid to WTT in the event WTT defaults on any term of this Contract.

### **IV. INDEMNIFICATION**

WTT agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by WTT, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. WTT covenants and agrees to and shall defend, indemnify and hold harmless the Town, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of WTT, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by WTT, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. WTT agrees to reimburse the Town for all sums which the Town may pay or may be paid on behalf of the Town or which the Town may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

## **V. TERMINATION**

- (a) The Town may terminate this Contract at any time if;
- (1) WTT defaults on any provision of this Contract and fails to correct such default after thirty (30) days written notice of default from the Town; or
  - (2) WTT fails to make any payment required under the Agreement For The Use of The Addison Theatre Centre within thirty (30) days after written notification of delinquency of payment by the Town; or
  - (3) The Town gives WTT at least sixty (60) days prior written notice; or
  - (4) WTT has offered, conferred, or agreed to confer any benefit upon a Town employee or official that the Town employee or official is prohibited by law from accepting; or
  - (5) If WTT should violate the provision in Section XII, Non-Discrimination and fails to correct the violations within thirty (30) days of written notice of the violation by the Town.

## **VI. CONFLICT OF INTEREST**

- (a) No officer or employee of the Town shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by Town officials in the conduct of WTT's business.
- (b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, WTT shall submit for the Town's review a budget showing the use of the Town's funds provided pursuant to this Contract, and WTT shall make such periodic reports to the Town, as provided for herein, listing the expenditures made by WTT from the funds provided by the Town. The approval of WTT's annual budget creates a fiduciary duty in WTT with respect to the funds provided by the Town under this Contract.

The funds paid to WTT pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the Town may be spent for day-to-day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

WTT shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By



the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), WTT shall provide the Town the following: (a) a detailed financial report for the previous quarter listing the expenditures made by WTT of the funds paid to WTT under this Contract; and (b) a year-to-date report of the expenditures made by WTT of the funds paid to WTT under this Contract (and if this Contract is terminated prior to its expiration, WTT shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the Town at any time, WTT shall make its records available for inspection and review by the Town or its designated representative(s). Within ninety (90) days of the end of WTT's fiscal year, WTT shall provide the Town with a financial statement signed by the Chairman of WTT's Board of Directors (or other person acceptable to the Town) and audited by an independent Certified Public Accountant, setting forth WTT's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the Town and WTT is that of independent contractor, and the Town and WTT by the execution of this Contract do not change the independent status of WTT. No term or provision of this Contract or action by WTT in the performance of this Contract is intended nor shall be construed as making WTT the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

### **IX. NON-ASSIGNABILITY**

WTT may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the Town, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the Town.

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the Town and WTT are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

### **XI. COPYRIGHT**

WTT assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in WTT's performances, transmissions or broadcasts, and WTT, without limiting any other indemnity given by WTT as set forth herein, agrees to defend, indemnify, and hold harmless the Town, its officials, officers, employees, and agents, for

any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of WTT's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

## **XII. NON-DISCRIMINATION**

During the term of this Contract, WTT agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

## **XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

WTT shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the Town) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the Town), as the same currently exist or as they may be hereafter amended.

## **XIV. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

## **XV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

## **XVI. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

## **XVII. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The Town and WTT agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no

date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The Town's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

WTT's address:

WaterTower Theatre Incorporated  
15650 Addison Road  
Addison, Texas 75001

### **XVIII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

### **XIX. AUTHORITY TO EXECUTE CONTRACT**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

### **XX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the Town and WTT and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the Town and WTT.

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE  
INCORPORATED**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

ATTEST:

By: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_  
Carmen Moran, City Secretary

EXHIBIT "A"  
TO  
2003-2004 CONTRACT FOR SERVICES  
BETWEEN THE TOWN OF ADDISON  
AND WATERTOWER THEATRE INCORPORATED

DESCRIPTION OF "MATCHING FUNDS" AND PROCESS FOR  
DISTRIBUTION OF MATCHING FUNDS  
FOR WATERTOWER THEATRE INCORPORATED  
FROM HOTEL/MOTEL TAX FUNDS

For each One Dollar of Theatre Funds (as defined herein) actually received by WTT, the Town shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). In order to receive Matching Funds, WTT shall provide to the Town such proof of its receipt of Theatre Funds as the Town shall reasonably require. WTT shall make application on or before the 15<sup>th</sup> day of each month for distribution of Matching Funds (beginning January 16, 2004) and the Town shall pay such Matching Funds provided the Town has received adequate proof, in the Town's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application.

For purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) that amount of funds determined by multiplying (a) the number of 2003-2004 WTT season tickets sold by WTT on or before November 15, 2003, times (b) the average cost of a single season ticket, times (c) 25%. For purposes of this Agreement, the average cost of a single season ticket shall be \$100.00.

**Council Agenda Item: #R11**

**SUMMARY:**

To consider approval of a facilities utilization agreement between the Town of Addison and the Water Tower Theatre for the use of the Addison Theatre Centre.

**FINANCIAL IMPACT:**

Revenue Budgeted Amount: \$74,200.00

Cost: \$ N/A

**BACKGROUND:**

The Water Tower Theatre utilizes the Addison Theatre Centre for all of its performances. The agreement specifies the Water Tower Theatre's facility rental charges, defines the areas for office and production space, and the facility's schedule of uses. The revenues received by the Town from rental and other miscellaneous charges are budgeted in the Hotel Fund.

**RECOMMENDATION:**

It is recommended that the City Council approve the facilities utilization agreement between the Town of Addison and the Water Tower Theatre for the use of the Addison Theatre Centre for FY 2003/04. This agreement shall be subject to final review and approval by the City Attorney.



## **AGREEMENT FOR THE USE OF THE ADDISON THEATRE CENTRE**

**THIS AGREEMENT** is between the Town of Addison, a municipal corporation, of Dallas County, Texas (“TOWN”) and the WaterTower Theatre, Inc. (“WTT”), a Texas nonprofit corporation with its principal place of business at Addison Theatre Centre, Addison, Dallas County, Texas.

**WHEREAS**, the TOWN has as one of its purposes the establishment, maintenance, promotion, and operation of cultural facilities for the benefit of the public; and

**WHEREAS**, the TOWN has constructed a theatre (Theatre Centre) in the furtherance of such purposes; and

**WHEREAS**, the Theatre Centre is located upon real estate as shown in Exhibit A which is attached and made a part of this Agreement; and

**WHEREAS**, the TOWN and WTT intend that the Theatre Centre will provide office space together with access to rehearsal and performance space, as well as serve as an outstanding performance facility that will attract other prominent performing groups and individuals to Addison; and

**WHEREAS**, the TOWN and WTT desire to enter into an agreement whereby WTT would be a user of the Theatre Centre with scheduling rights as defined in this document;

**NOW, THEREFORE**, the TOWN and WTT agree as follows:

### **SECTION 1**

#### **PURPOSE; THEATRE CENTRE DEFINED**

(a) The purpose of this Agreement is to state the terms and conditions under which WTT will use and occupy the described portions of the Theatre Centre and to describe the responsibilities of the TOWN in the operation and management of the Theatre Centre.

(b) As used in this Agreement “Theatre Centre” means the structure shown in Exhibit A. The areas indicated in Exhibit A shaded in blue denote the areas that are accessible to the lessee of the main theatre space. “Administrative Offices” shall mean those certain offices located in the Theatre Centre designated by the Manager of the TOWN (the "City Manager") for use by WTT, solely for their administrative activities, and set out on the plans, as attached Exhibit A denoted in red.

(c) WTT, its employees, agents, patrons, and invitees shall have a nonexclusive license to use the common areas designated on Exhibit A attached hereto but such license shall at all times be subject to the exclusive control and management by the TOWN. WTT hereby agrees to be bound by and to comply with such reasonable rules and regulations as the TOWN may establish with respect to the use of such common areas. The TOWN agrees to inform WTT

in writing of such rules and regulations, and of any changes to such that might occur. The term “common areas” shall include but not be limited to parking area, walkways, green areas and landscaped areas. The TOWN understands that WTT may, from time to time, wish to utilize the “common areas” as a part of or for performances. WTT agrees to inform the TOWN as prescribed in Section 4(c) of this agreement of the intent to use such common areas for theatrical performances or for other events. The TOWN and WTT agree to cooperate with the other in the event that the “common areas” are used for theatrical performances or events related to the conference center or any other event sponsored by the TOWN.

## **SECTION 2**

### **LEASE OF THEATRE CENTRE**

The TOWN, upon the terms and conditions contained herein, agrees to allow WTT use of, in accordance with the use and occupancy provisions of this Agreement, those facilities and areas within the Theatre Centre that are needed from time to time for its various activities including but not limited to performances, rehearsals, auditions, meetings, administration, ticket and merchandise sales, library, dressing, storage, and such other activities as approved by the Conference and Theatre Centre Manager (hereafter “Manager”), in writing, and as further set forth on the Theatre and Conference Center’s Master Booking Calendar. WTT shall furnish, in writing no later than June 1 of each year, schedules setting out all dates, times and spaces needed. The TOWN agrees to provide written confirmation of WTT’s use of spaces, on the dates and times requested, if such spaces are available when requested.

## **SECTION 3**

### **TERM AND TERMINATION**

(a) The term of this Agreement is for a period beginning on the first day of October 2003, and continuing until September 30, 2004, unless earlier cancelled, as provided herein.

(b) The TOWN may cancel this Agreement at any time if:

(i) WTT fails to make any payment required under this Agreement within 10 days after written notification of delinquency of payment by the TOWN; or

(ii) WTT violates any other provision of this Agreement and fails to begin correction of the violation within 25 days of written notification of the violation from the TOWN and fails to accomplish correction within a reasonable period thereafter; or

(iii) The TOWN shall give WTT sixty (60) days written notice; or

(iv) WTT fails to comply with any term of the 2003-2004 Contract for Services between the Town of Addison and Water Tower Theatre Company within thirty (30) days after written notice of such failure to comply from the TOWN.

(c) WTT may cancel this Agreement by giving the City Manager written notice sixty (60) days or more in advance of the cancellation date.

(d) This Agreement may be renewed and extended for a term of twelve (12) months beginning October 1, 2004, and ending September 30, 2005, and for like twelve (12) month periods thereafter upon the express written consent of the TOWN and WTT, given within ninety (90) days prior to October 1st each succeeding year.

## SECTION 4

### USE AND OCCUPANCY BY WTT

(a) *Office Areas.* During the term of this agreement, WTT has the use of the defined office space, as set out in Section 1(b) above and attached.

(b) *Schedule of Uses.* Attached hereto as Exhibit C are the proposed dates, times, and spaces requested by WTT in connection with shows or events to be produced by WTT during the term of this Agreement. The Manager shall review such dates, times, and spaces and confirm the same, in writing, to WTT. WTT is hereby advised that spaces in the Theatre Centre are available on a “first come” basis and are confirmed by notice in writing from the Manager and receipt by the TOWN of the payment for the required fees.

(c) *Box Office.* Box Office will be open and manned continuously during the following dates and times:

(i) During WTT Production/Presentation of Show Weeks:

Monday	Closed
Tuesday – Saturday	12:00 P.M. – 6:00 P.M.

Performance Days	One hour prior to each performance through the intermission of that performance
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(ii) During WTT Non-Production/Presentation of Show Weeks:

Saturday/Sunday/Monday	Closed
Tuesday – Friday	12:00 P.M.-6:00 P.M.

When WTT is producing or presenting an event, WTT must provide members of its staff to oversee the event from start to finish. A WTT representative must be on the premises throughout the duration of the event. Without in any way limiting any provision of this Agreement, in the event an emergency or urgent situation arises at or about the Theatre Centre while WTT is producing or presenting an event, WTT shall take such steps as are prudent and necessary to immediately respond to the emergency, including, without limitation, causing patrons at the Theatre Centre to vacate the premises and contacting the emergency services of the Town of Addison.

No performances may take place in the facilities during Town Sponsored special events. Limited use of the facilities MAY be granted at the Managers discretion for rehearsals, builds and technical work. If permission is granted, a maximum of 15 parking passes will be issued to

WTT allowing access to the Addison Airport parking area or other designated parking area at the TOWN's discretion.

During TOWN sponsored special events all dressing rooms will be available for use by the TOWN unless prior written authorization has been granted by the Manager.

Cancellation of scheduled spaces will be treated as follows: Cancellation more than forty-five (45) days before scheduled date, no penalty. Cancellation less than forty-five (45) days prior to the scheduled date, responsible for full rental payment.

It is expected that WTT will produce events, and, with the Town's express consent, present events.

Typically, "presenting" a show refers to an outside group bringing in a show or production to which WTT attaches its name. There is little risk involved but the return is often much lower and the presenter has little control over the product.

"Producing" a show implies that a theatre company takes the steps to create the show from the ground up. There is a larger amount of risk but the return and control of the product is much larger. [See Stephen Langley's *Theatre Management and Production in America* for general information.]

Presenting is subject to approval by the Town of Addison. A copy of the proposed contract will be sent to the Manager prior to being forwarded to the potential presenter.

(d) *Food and Beverage.* Food and beverages are prohibited within the main performance space at the Theatre Centre.

## **SECTION 5**

### **USE AND OCCUPANCY BY THE TOWN**

(a) *Scheduling Other Events.* Other than the dates and times when WTT has scheduled an event in accordance with Section 4, the TOWN has the unrestricted right to schedule other events in the Theatre Centre and utilize the scenery in place on such dates and times. The TOWN and WTT agree to cooperate and assist the other in scheduling events in the Theatre Centre for dates not scheduled by WTT. However, such efforts by WTT are subject to the express terms of Section 20 of this Agreement, and WTT recognizes that only the TOWN has authority to book events. Any damage to the set resulting from an event booked into the Addison Theatre Centre ("ATC") main space by the TOWN will be repaired at the TOWN's expense.

(b) *Concessions.*

(i) WTT may sell concessions only during WTT performances and must comply with all Town of Addison Environmental Health Regulations. Alcoholic beverages may only be dispensed in compliance the TABC rules and regulations. WTT shall have the right to use concession areas in connection with and at the time of WTT's scheduled performances.

WTT shall have no rights with respect to use of the concession areas or equipment, or other food and beverage service items belonging to or under the control of the TOWN at any other time. WTT will have access to the concession area for food and beverage storage and sale only on performance dates.

(ii) The TOWN shall not be liable to WTT, its employees, agent's patrons, or invitees for damages or otherwise for the quality, failure, unavailability, or disruption of any food or beverage or service thereof.

(c) *Control of the Theatre Centre.* The TOWN retains the right to control the management of the Theatre Centre through its representatives, and to enforce all necessary rules for its management and operation, and the TOWN, through its police officers, fire fighters, and other designated representatives, reserves the right at any time to enter any portion of the Theatre Centre. For non-emergency purposes, the TOWN shall attempt to provide reasonable notice to WTT.

(d) *Shows Not Produced by WTT.* At the TOWN's request, WTT shall provide certain box office services for shows not produced by WTT (for purposes of this subsection (d) of this Section 5, "Third Party Shows"), as follows:

(i) WTT shall sell tickets for Third Party Shows that take place within the ACTC venue. WTT shall be compensated by the TOWN for such sales as follows:

(1) Tickets Sold at the Box Office (in person or by telephone):

Computer Set-Up	\$75.00 for each Third Party Show
Ticket Sales Handling Fee (prior to the Third Party Show)	\$ 1.00 per Order (regardless of the number of tickets in an Order)

A reasonable credit card handling fee equal to three percent (3%) shall be charged for those tickets purchased with a credit card.

(2) Tickets Sold at the Box Office During Third Party Show:

First Performance	\$100.00 for the performance
Additional Performance	\$ 75.00 for each additional performance

(ii) In connection with each Third Party Show:

- (1) Blank ticket stock will be provided to WTT by the TOWN;
- (2) Third Party Show information shall be provided to WTT at least two (2) weeks prior to the first performance (to allow for set-up and ticket sales);
- (3) Ticket sales by WTT shall begin at least one (1) week prior to the first performance;

- (4) WTT personnel will carry out industry standard box office responsibilities;
- (5) The TOWN shall provide an employee or designated contract person to be present during a Third Party Show and to secure the Theatre Centre at the conclusion of a Third Party Show;
- (6) The organizer of the Third Party Show will be responsible for (x) house manager/ushers, (y) concessions/concessionaires, and (z) cleaning following a Show;
- (7) The TOWN shall seek to have the producer of the Third Party Show indemnify the Town and WTT for liability in connection with the Third Party Show.

## SECTION 6

### RENTAL

(a) WTT shall pay to the TOWN rent for its use of the office areas and other areas as reserved by WTT, according to the schedule of fees set forth in Exhibit B, attached hereto and made a part hereof. Payments for rent shall be made in twelve (12) equal installments, with each installment being due and payable on or before the 15<sup>th</sup> day of each month as payment for the immediately preceding month. The first such installment of rent is due and payable on or before November 15, 2003, and the last such installment is due and payable on or before October 15, 2004 (and the obligation of WTT to make the last installment shall survive the expiration of this Agreement). The rent paid by WTT may be adjusted from time to time to reflect a cancellation or addition of a show or event by WTT. The TOWN further reserves the right to adjust the rates of the fees set out on Exhibit B from time to time in accordance with changes in the costs associated with operating the facility. The TOWN shall invoice WTT for all dates, times and spaces reserved by WTT, including the fees for use of Office Spaces, as defined in Section 4(a).

(b) WTT will not be required to pay the fee for a date, or time, or space cancelled if the space is cancelled more than forty-five (45) days prior to the scheduled date or time.

(c) Cancellation less than forty-five (45) days prior to the scheduled date or time will require full payment for committed space.

(d) WTT agrees to pay the TOWN a monthly fee for telephone service. This fee will be charged for standard monthly service and long distance charges. In addition, any changes to the phone system requested by WTT will be charged back to WTT at the prevailing rate.

(e) WTT will pay monthly to the TOWN a fee for the copy machine in accordance with the following:

Monthly rental charge for copy machine:	\$191.67
Per page monthly copy fees:	
For the first 6,000 copies:	\$ 0.01/copy
For copies 6,001-12,000:	\$ 0.015/copy
For each copy over 12,000:	\$ 0.02/copy



All such copier charges and fees are subject to changes based on the TOWN's agreement with the copier rental company.

## **SECTION 7**

### **USE OF EQUIPMENT**

The TOWN recognizes that there may be third party users of the Theatre Centre for the purposes of staging a theatrical performance and that they may request the use of TOWN-owned equipment. Any lease or other agreement with a third party user allowed to operate TOWN-owned equipment shall expressly provide that any damages to or loss of the equipment from a third party user shall be the responsibility of that third party, and deposits will be required in the discretion of the TOWN. Any damages to or loss of TOWN-owned equipment in the Theatre Centre during the conduct of WTT's performances, WTT Education Department programming or day-to-day use by WTT shall be the responsibility of WTT.

If WTT desires to use and operate TOWN-owned equipment including but not limited to lighting and sound systems, then WTT shall obtain approval on a per-show basis from the TOWN for the use by WTT's technicians. Use of automated lighting fixtures, Obsession II control console, and wireless microphones must have prior written approval by ACTC Manager. The cost of repair for any damage to the equipment from use of the equipment by WTT or replacement of any lost equipment shall be the sole responsibility of WTT and shall be subject to offset against any funding or grant obligations of the TOWN to WTT. The TOWN shall not be responsible for consequential damages resulting from inability to use the equipment. WTT agrees that each person employed by WTT to provide services in the Theatre Centre will be required to conduct himself/herself in a professional manner, and WTT will cooperate with the TOWN to assure professional conduct is maintained at all times.

All details of the production/event must be provided in writing to the Manager at least one month prior to the first day of occupancy of the space. No equipment owned by the TOWN may be contracted or committed by WTT without the manager's approval. No services provided by Town employees may be contracted or committed by WTT without the Manager's written approval. In the event WTT is working in conjunction with an outside company as co-presenter or producer, a written list of equipment needed must be submitted to the Manager one month prior to WTT signing a contract with the outside company.

## **SECTION 8**

### **TOWN OF ADDISON TECHNICAL COORDINATOR**

The TOWN employs an individual in the role of Technical Coordinator whose duties include protecting and maintaining the TOWN's investment in equipment and facilities at the Theatre Centre. In addition, the Technical Coordinator shall provide services relating to the technical nature of the facility and the presentation. Details of the services provided by the Technical Coordinator are available, in writing, from the Manager, upon request.

## **SECTION 9**

### **UTILITIES**

The TOWN shall provide for all water, air conditioning, heat, and electricity incurred in the Theatre Centre. WTT shall reimburse the Town for all costs associated with its telephone service. The TOWN shall not be liable to WTT in damages or otherwise for the quality, quantity, failure, availability, or disruption of water, air conditioning, heat, electricity, and other utilities furnished by the TOWN.

## **SECTION 10**

### **MAINTENANCE SERVICES**

(a) The TOWN shall provide:

(i) Routine janitorial service and maintain the interior of the Theatre Centre in a clean condition, by providing routine janitorial service one time per day as needed. WTT must leave the spaces in a reasonable condition following all productions/events, which includes but is not limited to: placing all lobby, green room and dressing room trash in garbage cans and walking the main space for playbills and trash left by patrons after every performance. The same definition of routine janitorial service applies to educational camps. Any services above routine will be billed to WTT at the prevailing rate.

(ii) Maintenance of the heating, ventilation and cooling system in the Theatre Centre.

(iii) Maintenance of the Theatre Centre grounds and structure in reasonably good condition and in compliance with applicable laws.

(b) The TOWN shall not be liable for repairs to any portion of the Theatre Centre until it receives written notice pursuant to the operating policies and procedures in Section 6(a), of the necessity for such repairs and, provided further, that such repairs are not necessitated by any act or omission of WTT, or any of WTT's agents, employees, contractors, invitees or patrons.

(c) WTT shall not cause or permit any waste, damage, or injury to the Theatre Centre. WTT shall, at its sole cost and expense, repair any damage or injury caused to the Theatre Centre by WTT, its employee's agents, invitees or patrons.

(d) WTT shall store its property and the personal property of the TOWN in a neat and orderly manner, and its operations in the Theatre Centre shall be carried out in accordance with the highest professional standards.

(e) WTT shall not store or maintain flammable or hazardous materials in the Theatre Centre in violation of the Fire Code or other applicable laws and codes.

(f) In the event the obligations of WTT set out in Sections (d) and (e), above, are not carried out in a timely manner, then the Town has the right, but not the obligation, to satisfy such requirements at the cost of WTT.

## **SECTION 11**

### **OWNERSHIP OF PROPERTY**

(a) The Theatre Centre and all improvements to the Theatre Centre are the property of the TOWN. All personal property owned by the TOWN and placed in the Theatre Centre remains the property of the TOWN.

(b) All personal property owned by WTT and placed in the Theatre Centre remains the property of WTT.

(c) All personal property owned by a sublease, contractor or concessionaire of the TOWN and placed in the Theatre Centre remains the property of the sublessee, contractor or concessionaire, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract.

(d) On or before July 1 of each year, during the existence or continuation of this agreement, WTT shall furnish to the TOWN a listing of all of the personal property of WTT located in the Theatre Centre.

(e) WTT shall not allow or permit any of the personal property of the TOWN to be loaned for use or operation by any third parties.

## **SECTION 12**

### **ACKNOWLEDGEMENTS IN PRINTED MATERIALS**

WTT agrees to prominently acknowledge the TOWN for its support of WTT in all appropriate printed materials. All public references to WTT will be characterized as "WTT at the Addison Theatre Centre" or some derivative of that indicating the WTT is at the ATC.

## **SECTION 13**

### **INSURANCE**

(a) WTT shall procure, pay for, and maintain the following insurance written by companies licensed in the State of Texas or meeting the surplus lines requirements of Texas law and acceptable to the City Manager. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to the Manager. The insurance requirements shall remain in effect throughout the term of this Agreement. The City Manager reserves the right to modify the kinds of coverage and deductibles required and increase minimum limits of liability of the coverage whenever, in his discretion, it becomes necessary.

(i) *Workers' Compensation* as required by law; *Employers Liability Insurance* of not less than \$100,000 for each accident.

(ii) *Comprehensive General Liability Insurance*, including Personal Injury Liability, Independent Contractor's Liability, Premises Operation Liability, and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death, and property damage of not less than \$1,000,000. Coverage must be on an "occurrence" basis, and the policy must include Broad Form Property Damage Coverage, with Fire and Extended Coverage Liability of not less than \$1,000,000 per occurrence.

(iii) *Comprehensive Automobile and Truck Liability Insurance* covering owned, hired and non-owned vehicles, with minimum limits of \$1,000,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards.

(iv) \$2,000,000 combined single limits bodily injury and property damage liability insurance, including death, as an excess of all the primary coverages required above.

(b) Each liability insurance policy must include the following conditions by endorsement to the policy:

(i) The TOWN must be named as an additional insured.

(ii) Each policy must require that 60 days before the cancellation, nonrenewal, or any material change in coverage, a notice thereof shall be given to the TOWN by certified mail to: City Manager, Town of Addison, Box 9010, Addison, TX 75001-9010.

(iii) Companies issuing the insurance policies shall have no recourse against the TOWN for payment of any premiums, assessments, or any deductibles, all of which are at the sole risk of WTT.

(iv) The Term "Town" or "Town of Addison" includes all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the TOWN and the individual members, employees and agents of the TOWN including the TOWN's Manager, while acting in their official capacities on behalf of the TOWN.

(v) The policy clause "Other Insurance" shall not apply to the TOWN where the TOWN is an additional named insured on the policy.

(c) Each party hereto hereby waives each and every claim which arises or may arise in its favor and against the other party hereto during the term of this lease or any extension or renewal thereof for any and all injuries (including death) and loss of, or damage to, any of its property which claim, loss or damage is covered by valid and collectible fire and extended coverage insurance policies, liability insurance policies, workers' compensation policies, and any other insurance policies which may be in place from time to time, to the extent that such claim, loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss, damage or injury (including death) to persons or to property. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party

hereto hereby agrees immediately to give each insurance company which has issued to its policies of fire and extended coverage insurance, liability insurance, workers' compensation insurance, or such other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary to prevent the invalidation of said insurance coverages by reason of said waivers.

(d) WTT shall use best efforts for security precautions necessary for the protection of its property. The TOWN shall be liable for any damage to or loss of WTT property used or stored on, in, or about the Theatre Centre, arising solely from negligence of the TOWN or its agents. However, the TOWN shall not be responsible for any damage or loss which shall not arise solely from the negligence of the TOWN or its agents.

(e) Insurance required under this section must be furnished annually for the duration of this Agreement. Executed certificates of insurance must also be delivered annually.

(f) To the extent reasonably obtainable, the TOWN will secure fire and extended coverage insurance on the Theatre Centre with coverages and limits to be determined by the TOWN to insure the Theatre Centre with coverages and limits to be determined by the TOWN. In the event all or any portion of the Theatre Centre is damaged or destroyed by fire or other casualty, the TOWN shall, at its cost and expense, limited to a maximum expenditure of the amount of insurance proceeds, if any, available to the TOWN by reason of such fire or other casualty, restore, repair, replace and rebuild the Theatre Centre as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Coverage provided in this subsection shall be for the benefit of the TOWN and shall not protect WTT for loss or damage of property owned by WTT.

## **SECTION 14**

### **ABATEMENT OF NUISANCES**

WTT shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by WTT, its officers, agents, or employees, or invitees in or upon or connected with the Theatre Centre, and shall pay for the costs of compliance. The TOWN and WTT agree to cooperate with each other in the abatement of nuisances caused by noise associated with events scheduled in either the Conference or Theatre Centre. WTT hereby recognizes that the Town produces Special Events on scheduled dates through the year, which scheduled Special Events shall take priority over any other use.

## **SECTION 15**

### **ALTERATIONS, ADDITIONS, AND IMPROVEMENTS**

(a) To the extent reasonably necessary or desirable for WTT to use and occupy the Theatre Centre, upon prior written approval of the Manager, WTT may erect or install within the performance space any temporary alterations, additions, or equipment needed for a production which do not alter the structural integrity or basic configuration of the performance space. WTT must comply with all applicable governmental laws, statutes, ordinances, codes, and regulations regarding structures.

(b) All installations, alterations, additions and improvements made in, on, or to the Theatre Centre by WTT or the TOWN shall be deemed to be property of the TOWN and unless the TOWN directs otherwise, shall remain upon and be surrendered with the Theatre Centre as a part thereof in good order, condition and repair, ordinary wear and tear excepted, upon WTT's vacating or abandonment of the Theatre Centre. If the TOWN directs, WTT shall remove all or any portion of the improvements and WTT's property, on or immediately prior to the termination of WTT's right to possession. The Town may choose to reconfigure the theatre space at any time not reserved by WTT. The Town will return the seating to the previous configuration if requested by WTT.

## **SECTION 16**

### **INDEMNIFICATION**

WTT is responsible for any and all claims and demands on account of any injury or death, or damage to property including, but not limited to, the Theatre Centre occurring in or upon any portion of the Theatre Centre which are caused by the acts or omissions of WTT, its officers, employees, representatives, agents, licensees, sublessees or contractors, invitees and patrons. WTT shall defend, indemnify and hold harmless the TOWN, its public officials, officers, employees, and agents from and against any and all claims, demands, actions, causes of action, penalties, judgments, and liabilities of every kind and description (including court costs and reasonable attorney's fees) for injury to and death of persons, and damage to and loss of property which are caused by, arise from or grow out of WTT's use or occupancy of the Theatre Centre or from any breach by WTT of any condition of this Agreement, or from any act or omission of WTT, its officers, employees, representatives, agents, licensees, sublessees or contractors, invitees and patrons.

## **SECTION 17**

### **BONDS**

Unless waived in writing by the City Manager, WTT agrees to cause its contractors to provide, before commencing any work or construction in its designated areas, a performance bond and labor and material payment bond for any improvements the construction of which could result in a third party filing or seeking to file a lien against the Theatre Centre, which is undertaken by WTT during the term of this Agreement in a sum equal to the full amount of the construction contract award, with the TOWN and WTT named as joint obligees.

## **SECTION 18**

### **NON-DISCRIMINATION**

During the term of this agreement, WTT shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap. Should WTT violate the provisions of this section, or fail to comply with the requirements of the Americans with Disabilities Act, the TOWN may terminate this Agreement if WTT fails to correct the violations within 60 days of written notice of the violation by the TOWN.

## **SECTION 19**

### **AUDITS**

WTT shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year with its proposed annual operating budget to the City Manager. The TOWN reserves the right to require a special audit of WTT's books and records at any time either by the City Manager or by an outside independent auditor if such action is determined necessary by the Town Council. The TOWN shall pay all expense of the independent auditor related to the special audit. WTT shall make available to the TOWN or its agents all necessary books, records and other documents necessary to perform such audit.

## **SECTION 20**

### **ASSIGNMENT**

WTT shall not assign this Agreement, in whole or in part, without the prior written consent of the TOWN, which consent is in the sole and unrestricted discretion of the TOWN. Assignment of this Agreement shall not relieve WTT of its obligations under this Agreement. Approval of the TOWN to one assignment shall not constitute approval to any other or further assignment of this Agreement. WTT shall not sublease or sublet or permit the Theatre Centre, or any part thereof to be used by others.

## **SECTION 21**

### **NOTICES**

Any notice, payment, statement, or demand required or permitted to be given by either party to the other may be effected by personal delivery, actual receipt via regular mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

If intended for the TOWN, to:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
P.O. Box 9010  
Addison, TX 75001-9010

If intended for WTT, to:

Producing Artistic Director  
WaterTower Theatre, Inc.  
15650 Addison Road  
Addison, TX 75001

## **SECTION 22**

### **APPROVALS**



(a) Whenever in this Agreement the approval of the TOWN is required for any purpose, WTT shall file the appropriate documents with the Addison Conference and Theatre Centre (“ACTC”) Manager with notice of action proposed to be taken, and the ACTC Manager agrees to notify WTT of the TOWN’s approval or disapproval within 60 days of the filing thereof.

(b) Approval shall be by the City Council of the TOWN where required by the Charter of the Town. The City Manager may delegate approval authority to the facilities manager or his authorized representatives where permitted by the Charter of the Town or ordinances, and notify WTT of such delegation.

## **SECTION 23**

### **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the TOWN and WTT and their respective successors and permitted assigns.

## **SECTION 24**

### **APPLICABLE LAWS**

This Agreement is made subject to the charter and ordinances of the TOWN, as amended, and all applicable laws and regulations of the State of Texas and the United States.

## **SECTION 25**

### **INTELLECTUAL PROPERTY AND COPYRIGHT INDEMNIFICATION**

WTT assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in WTT’s performances, transmissions or broadcasts, and WTT agrees to defend, indemnify, and hold harmless the TOWN, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney’s fees) growing out of WTT’s infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

## **SECTION 26**

### **NO PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this agreement shall be deemed to constitute the TOWN and WTT partners or joint venturers with each other.

## **SECTION 27**

### **NO WAIVER**

No waiver by the TOWN of any default or breach of any term, covenant, or condition of this Agreement by WTT shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this Agreement.

## **SECTION 28**

### **FORCE MAJEURE**

If the Theatre Centre or any portion of it shall be destroyed or damaged by fire or any other calamity so as to prevent the use of the premises for the purposes and during the periods specified in this Agreement, or the use of the Theatre Centre by WTT is prevented by act of God, strike or lockout against the TOWN, WTT or any third party, material or labor restrictions by any governmental authority, civil riot, flood or other cause beyond the control of the TOWN, then, depending on the extent of damage to the Theatre Centre, the TOWN shall notify WTT as soon as reasonably practical, that the parties shall be excused from performance of the Agreement for such period of time as is reasonably necessary to remedy the effects of the occurrence and, at the option of the TOWN, this Agreement shall terminate and the TOWN shall not be liable for any claim by WTT for damage or loss by reason of termination. If the performance of this agreement for the reasons identified above is prohibited for a period of 180 days or longer, then WTT shall have the right to terminate.

## **SECTION 29**

### **VENUE**

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce them, exclusive venue shall lie in Dallas County, Texas.

## **SECTION 30**

### **LEGAL CONSTRUCTION**

In the case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

## **SECTION 31**

### **SIGNAGE**

WTT shall not place or permit to be placed on the exterior of the Theatre Centre, or the door, window or roof thereof, or on any display window space, or within five feet behind the storefront of the Theatre Centre, if visible from the common area, any sign, plaque, decoration, lettering, advertising matter or descriptive material without the TOWN's prior written approval. WTT may submit a written request for approval to project images and text onto the water tower. All signs, decorations, lettering, advertising matter or other items used by WTT and approved by

the TOWN as aforesaid shall conform with the standards of design, motif, and decor from time to time established by the TOWN for the Theatre Centre. WTT shall furnish to the Manager of the Conference and Theatre Centre a written proposal describing any signage to be placed in the Theatre Centre. The Manager agrees to respond within fourteen (14) days in writing to the proposal.

## **SECTION 32**

### **USE OF THE ROOF**

WTT shall not attach to or construct on or penetrate the roof of the Theatre Centre without the prior written consent of the City Manager.

**EXECUTED** \_\_\_\_\_, but effective as of October 1, 2003 as approved by the parties hereto.

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

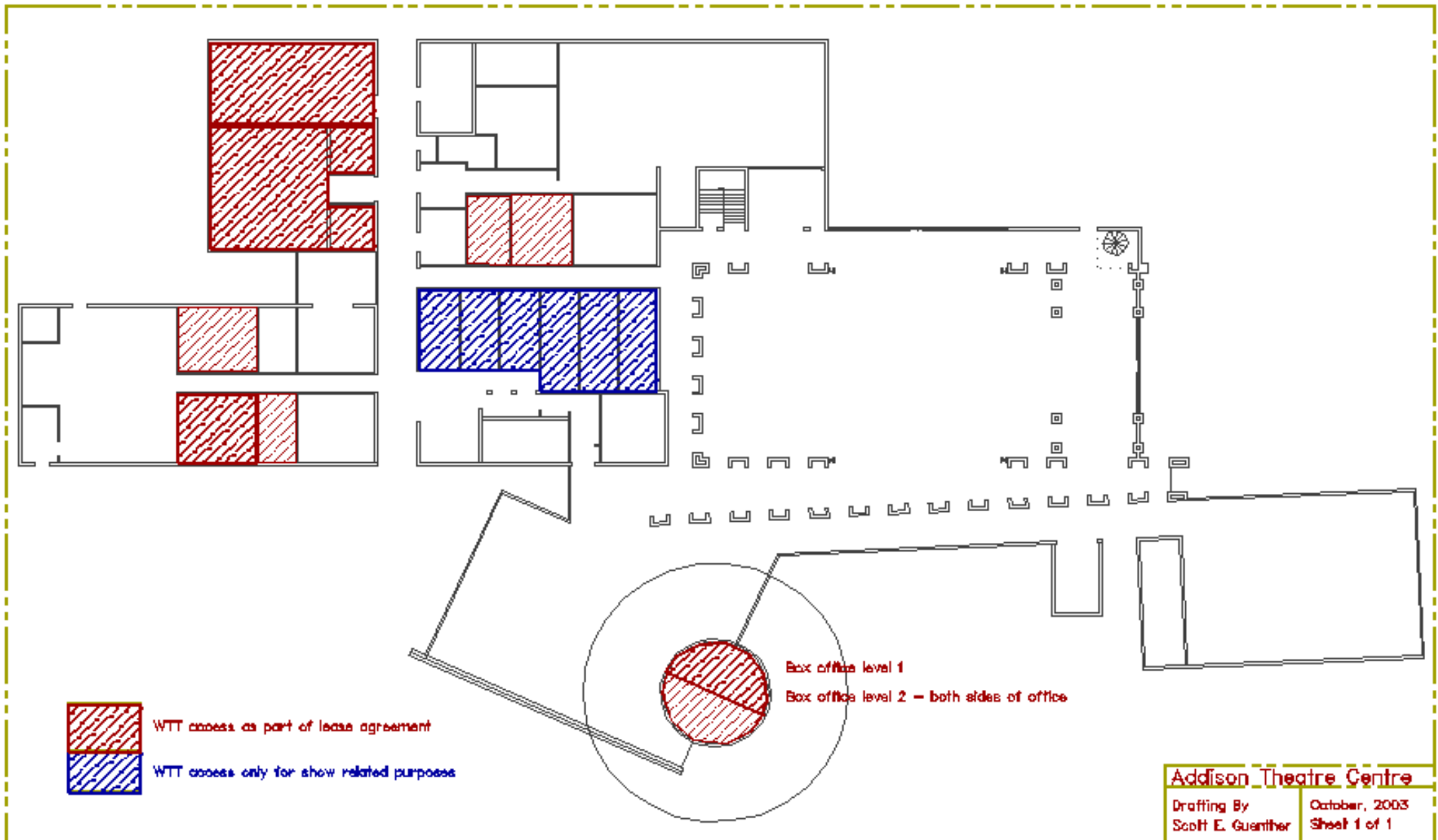
By: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Its: President

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, Town Secretary

**EXHIBIT A**  
**ADDISON THEATRE CENTRE**

**#R11-3**



## **EXHIBIT B**

# **RATE SHEET FOR WTT**

(Revised October 1, 1998)

Theatre rental rates include use of the Main Space, Lobby, Box Office, Dressing Rooms, Green Room and Costume shop.

### **OFFICE SPACE RENTAL**

\$400.00 per month

### **MAIN SPACE PERFORMANCE**

Weekdays	\$200.00	per 8 hour block
Weekends	\$275.00	per 8 hour block

Performance blocks of time are defined as actual performances of the production

### **MAIN SPACE REHEARSAL**

Weekdays	\$150.00	per 8 hour block
Weekends	\$200.00	per 8 hour block

Rehearsal blocks of time are defined as rehearsals conducted on the set of the production

### **MAIN SPACE PRODUCTION**

Weekdays	\$150.00	per 8 hour block
Weekends	\$200.00	per 8 hour block

Production blocks of time are defined as set construction, reconfiguration of the space and light spot configuration

### **REHEARSAL SPACE**

Weekdays	\$ 75.00	per 8 hour block
Weekends	\$100.00	per 8 hour block

### **EDUCATION MAIN SPACE RATES**

Weekdays	\$ 25.00	per hour for a minimum of 2 hours per day
Weekends	\$ 35.00	per hour for a minimum of 2 hours per day

This price is good for Education classes only and only if WaterTower Theatre provides the Manager of the Addison Conference & Theatre Centre with a detailed scheduling request that includes times of use. Only upon submittal of the detailed schedule and subject to availability of the space and date requested, will these rates be valid. If no times are submitted with the dates, we shall assume that the request is for an eight-hour block and will be invoiced accordingly.

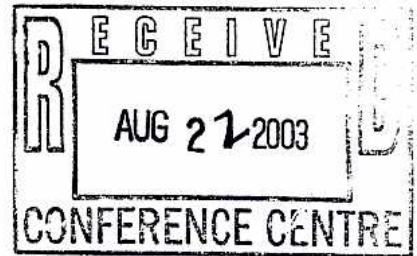
### **STONE COTTAGE**

Weekdays	\$ 75.00
Weekends	\$100.00

EXHIBIT C

# August 2003

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13	14 DWF auditions (RH)	15 DWF auditions (RH)	16 DWF auditions (RH)
17 DWF callbacks (RH)	18	19	20	21	22	23
24	25 DWF set concept due	26	27 DWF production meeting	28	29	30
31	Summer Maintenance					

July

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

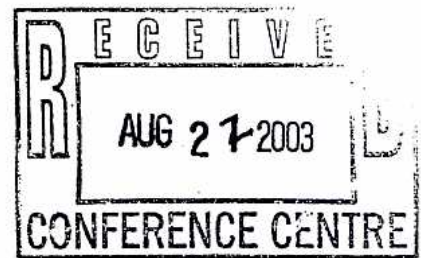
September

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			



# September 2003

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Labor Day	2 DWF - set drawings for costing due	3	4 pub. photo shoot?	5	6
		Summer Maintenance				
7	8 DWF costume sketches due DWF set finals & model due	9	10	11 pub. photo shoot?	12	13
	Build in shop					
14	15	16	17	18 Oktoberfest	19 Oktoberfest	20 Oktoberfest
	Build in shop					
21 Oktoberfest	22 1:00 PM - 4:00 PM class- RH DWF reh props, cost sk & Prelim light plot w/ gel & template order	23	24	25	26	27
	Build in MS					
	DWF rehearsal - RH					
28	29 1:00 PM - 4:00 PM class- RH Final light & sound plot due	30				
	hang & focus					
	DWF rehearsal - MS					
DWF rehearsal...	Build in MS					

August

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

October

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

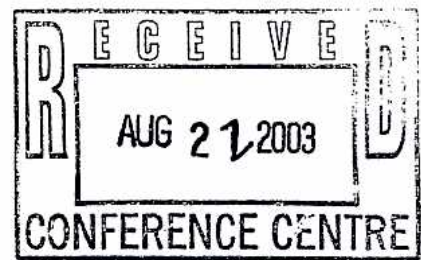






# November 2003

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 DWF - MS
2 DWF - MS	3 1:00 PM - 4:00 PM class- RH Loop entry deadline	4	5	6	7	8 Texas Chamber Orchestra
	Strike & seat change-over - MS					
9	10 1:00 PM - 4:00 PM class- RH	11	12	13	14	15
	Build RCP - MS					
16	17 1:00 PM - 4:00 PM class- RH SG set concept due	18	19 SG production meeting	20	21	22
	Build RCP - MS					
	RCP rehearsal - RH					
23	24 1:00 PM - 4:00 PM class- RH Final light & sound plot due	25	26	27 Thanksgiving	28	29 SLD rehearsal ...
RCP rehearsal ...	RCP rehearsal - MS			RCP rehearsal - MS		
	Build RCP - MS			Build RCP - MS		
30 Final props due RCP tech - MS						
SLD rehearsal ...						
Build RCP - MS						

October

S	M	T	W	T	F	S
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

October

S	M	T	W	T	F	S
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

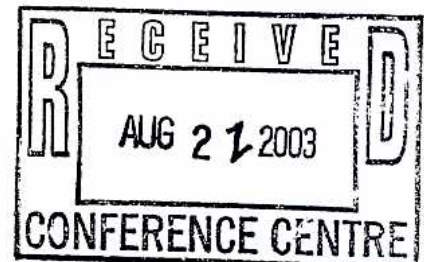
December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



# December 2003

## 2003-2004 Season



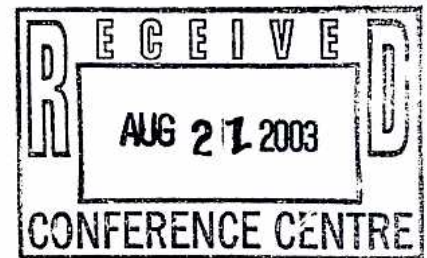
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
	1	2	3	4	5	6	
	1:00 PM - 4:00 PM class- RH			RCP - MS	RCP - MS	RCP - MS	
	SG set for costing due			SLD - SC	SLD - SC	SLD - SC	
	SLD rehearsal - SC						
	RCP dress - MS						
	Build RCP - MS						
7	8	9	10	11	12	13	
RCP - MS	1:00 PM - 4:00		RCP - MS	RCP - MS	RCP - MS	RCP - MS	
SLD - SC	PM class- RH		SLD - SC	SLD - SC	SLD - SC	SLD - SC	
TOA Christmas Party	SG costume sket- ches due						
	SG set finals due						
	SG build shop						
14	15	16	17	18	19	20	
RCP - MS			RCP - MS	RCP - MS	RCP - MS	RCP - MS	
SLD - SC			SLD - SC	SLD - SC	SLD - SC	SLD - SC	
	SG build shop						
21	22	23	24	25	26	27	
RCP - MS				Christmas			
SLD - SC							
	new dimmer instal - MS				new dimmer in...		
28	29	30	31				
	new dimmer instal - MS						
	RCP strike - MS						
				November 03		January 04	
				S M T W T F S		S M T W T F S	
				2 3 4 5 6 7 1		4 5 6 7 8 9 10	
				9 10 11 12 13 14 15		11 12 13 14 15 16 17	
				16 17 18 19 20 21 22		18 19 20 21 22 23 24	
				23 24 25 26 27 28 29		25 26 27 28 29 30 31	
				30			

November 03						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

January 04						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

# January 2004

## 2003-2004 Season

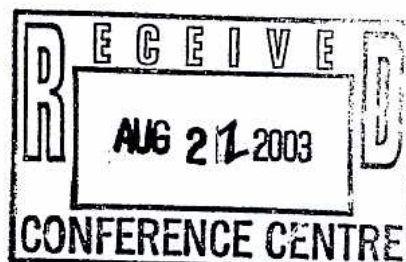


Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 New Years Day	2  RCP strike - MS new dimmer in...	3
4	5 SG rehearsal props, costume sketches & Prelim Light plot and gel & template order	6 SG rehearsal - RH	7 SG rehearsal - RH	8 SG rehearsal - RH	9 SG rehearsal - RH	10 SG rehearsal - RH
	SG build - MS					
	new dimmer instal - MS					
11 SG rehearsal - RH	12 final light & sound plot due Loop info meeting - MS	13	14	15	16	17
	SG build - MS					
	hang & focus					
	SG - rehearsal - MS					
18 11:00 AM - 11:00 PM SG tech - MS Final props & costumes due	19	20	21	22 SG preview - MS	23 SG - MS	24 SG - MS
	SG dress - MS					
	SG build - MS					
25	26 IC set concept due	27	28 IC production meeting SG possible perf. - MS	29 SG - MS	30 SG - MS	31 SG - MS



# February 2004

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 SG - MS	2 IC set drawings for costing	3	4 SG - MS SG possible perf. - MS	5 IC aud - RH SG - MS	6 IC aud - RH SG - MS	7 IC aud - RH SG - MS
8 IC aud - RH SG - MS	9 IC set finals w/ constr. drawings & model	10	11 SG - MS SG possible perf. - MS	12 IC auditions - RH SG - MS	13 IC auditions - RH SG - MS	14 IC auditions - RH SG - MS
IC build - shop						
15 SG - MS	16 1:00 PM - 4:00 PM class- RH	17	18	19	20	21 Texas Chamber Orchestra - MS WTT Gala - offsite
IC build - shop						
WTT Loop show rehearsal - RH						
22	23 1:00 PM - 4:00 PM class- RH	24	25	26	27	28
Loop tech reh - MS, RH, SC						
Loop prep, seat shift - all spaces						
WTT Loop show rehearsal - RH						

29

WTT Loop sho...

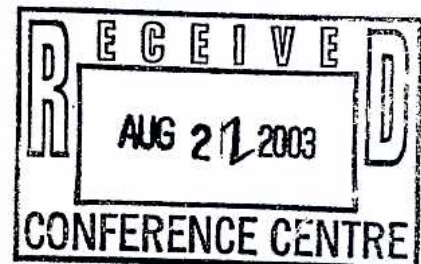
Loop tech reh ...

January						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

March						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

# March 2004

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 1:00 PM - 4:00 PM class- RH	2	3	4 Out of the Loop Festival - MS, RH, SC	5 Out of the Loop Festival - MS, RH, SC	6 Out of the Loop Festival - MS, RH, SC
	WTT Loop show rehearsal - RH					
	Loop tech reh - MS, RH, SC					
7 Out of the Loop Festival - MS, RH, SC	8 1:00 PM - 4:00 PM class- RH Out of the Loop Festival - MS, RH, SC	9 Out of the Loop Festival - MS, RH, SC	10 Out of the Loop Festival - MS, RH, SC	11 Out of the Loop Festival - MS, RH, SC	12 Out of the Loop Festival - MS, RH, SC	13 Out of the Loop Festival - MS, RH, SC
14 Out of the Loop Festival - MS, RH, SC	15 1:00 PM - 4:00 PM class- RH IC costume sk, reh props & prelim light plot w/ gel & template order	16	17	18	19	20
	IC build - MS					
	IC rehearsal - RH					
21	22 1:00 PM - 4:00 PM class- RH IC final light plot due	23	24	25	26	27
	hang & focus			write LQs		
	IC rehearsal - MS					
IC rehearsal - ...	IC build - MS					
28 IC final props due IC tech - MS	29 1:00 PM - 4:00 PM class- RH	30	31			
	IC dress - MS					
	IC build - MS					

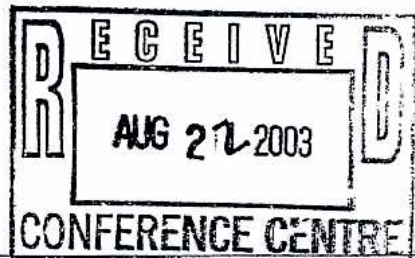
February						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29						

April						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	



# April 2004

## 2003-2004 Season

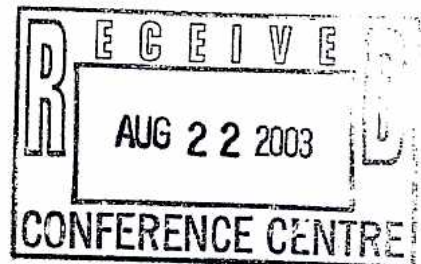


Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																	
<div>March</div> <table> <tr><td>S</td><td>M</td><td>T</td><td>W</td><td>T</td><td>F</td><td>S</td></tr> <tr><td></td><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td></tr> <tr><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td></tr> <tr><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td><td>19</td><td>20</td></tr> <tr><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td><td>26</td><td>27</td></tr> <tr><td>28</td><td>29</td><td>30</td><td>31</td><td></td><td></td><td></td></tr> </table>				S	M	T	W	T	F	S		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31				1	2	3							
S	M	T	W	T	F	S																																																	
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Easter IC - MS	1:00 PM - 4:00 PM class- RH Company - set for costing due		IC - MS	IC - MS	IC - MS	IC - MS																																																	
18	19	20	21	22	23	24																																																	
IC - MS	1:00 PM - 4:00 PM class- RH Company set finals w/ constr. drawings and model due		Camp intern aud. - RH IC - MS	IC - MS	IC - MS NO aud - RH	IC - MS NO aud - RH																																																	
Company build - shop																																																							
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IC - MS NO aud - RH	1:00 PM - 4:00 PM class- RH																																																						
seat shift & IC strike - MS																																																							



# May 2004

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 Texas Chamber Orchestra - MS
2	3 1:00 PM - 4:00 PM class- RH	4	5	6	7	8
	Company build - shop					
	Dance Xpress - MS					
	Company rehearsal - RH					
9	10	11	12	13	14	15 Taste Addison
Dance Xpress ...	Company build - MS					
	Company rehearsal - RH					
16	17	18	19	20	21	22
Taste Addison	Light & sound plot					
	hang & focus				write LQs	
	Company rehearsal - MS					
Company rehe...	Company build - MS					
23	24	25	26	27	28	29
Company tech - MS				Company preview	Company - MS	Company - MS
Final props & costumes						
	Company dress					
	Company build - MS					
30	31 Memorial Day					

April

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

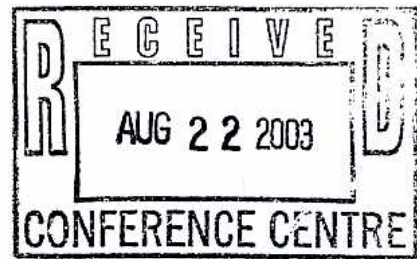
June

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May 2004  
*2003-2004 Season*

May  
10

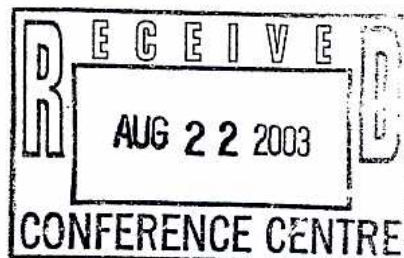
Co.reh props, costume sk & prelim l. plot w/ gel & templ-  
ate order





# June 2004

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
		NO set prelims		Company - MS	Company - MS	Company - MS
				NO aud - RH	NO aud - RH	NO aud - RH
		JR camp 1 - cott 9-12 possibility				
		intern camp - RH				
6	7	8	9	10	11	12
Company - MS	set finals for		Company - MS	Company - MS	Company - MS	Company - MS
NO aud - RH	costing					
		Theatre Camp - MS, RH, Cott				
		JR camp 1 - cott				
13	14	15	16	17	18	19
Company - MS	set finals w/		Company - MS	Company - MS	Company - MS	Company - MS
	constr. drawings					
	and model					
		Theatre Camp - MS, RH, Cott				
		NO build - shop				
		JR camp 2				
20	21	22	23	24	25	26
Camp change-over				Camp Show - MS	Camp Show - MS	Camp Show - MS
Company - MS						
		JR camp 2				
		camp & NO build				
		Theatre Camp - MS, RH				
27	28	29	30			
Camp Show - MS	NO reh props &					
	cost. sk due					
		NO rehearsal - RH				
Theatre Camp ...		NO build & camp strike - MS				

May

S	M	T	W	T	F	S
2	3	4	5	6	7	1
9	10	11	12	13	14	8
16	17	18	19	20	21	15
23	24	25	26	27	28	22
30	31					29

July

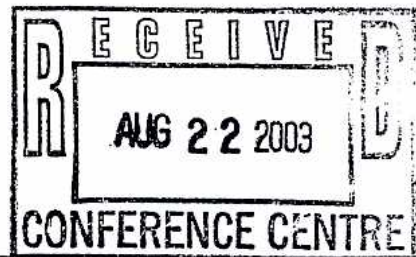
S	M	T	W	T	F	S
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18	19	20	21	22	23	24
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May						
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30	31					

July						
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

# July 2004

## 2003-2004 Season

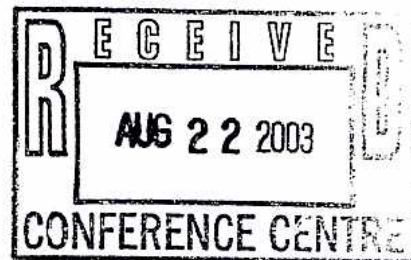


Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																																																				
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				NO - MS	NO - MS	NO - MS																																																																																				



# August 2004

## 2003-2004 Season



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
NO - MS			NO - MS	NO - MS	NO - MS	NO - MS
8	9	10	11	12	13	14
NO - MS			NO - MS	NO - MS	NO - MS	NO - MS
15	16	17	18	19	20	21
NO - MS						
22	23	24	25	26	27	28
29	30	31				

**RESOLUTION NO. R03-XXX**

A RESOLUTION BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN "AGREEMENT FOR THE USE OF THE ADDISON THEATRE CENTRE" BETWEEN THE TOWN AND WATERTOWER THEATRE FROM OCTOBER 1, 2003 THROUGH SEPTEMBER 30, 2004.

WHEREAS, the Town has as one of its purposes the establishment, maintenance, promotion, and operation of cultural facilities for the benefit of the public; and,

WHEREAS, the Town has constructed a theatre (Theatre Center) in the furtherance of such purposes; and,

WHEREAS, the Town and WaterTower Theatre (WTT) intend that the Theatre Center will provide office space together with access to rehearsal and performance space, as well as serve as an outstanding performance facility that will attract other prominent performing groups and individuals to Addison; and,

WHEREAS, the Town and WTT desire to enter into an agreement where WTT would be the user of the Theatre Centre with certain scheduling rights; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

THAT, the City Council does hereby authorize the City Manager to enter into an "Agreement for the Use of the Addison Theatre Centre" between the Town and WaterTower Theatre from October 1, 2003 through September 30, 2004.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 9<sup>th</sup> day of December, 2003.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary



**Council Agenda Item: #R12**

**SUMMARY:**

This item is for approval of a Professional Service Agreement with PBS&J to perform a Vulnerability Assessment of the Town's water system and suggest appropriate changes to our Emergency Response Plan.

**FINANCIAL IMPACT:**

Budgeted Amount: \$35,000

Cost: \$31,000

Source of Funds: Public Works Engineering Budget

**BACKGROUND:**

In September 2002, the Town received a letter from the U.S. Environmental Protection Agency (EPA) describing actions the Town of Addison must take in order to comply with the Bioterrorism Preparedness and Response Act (PL 107-188). The Act requires water systems serving a population of 3,301 to 49,999, including Addison, to certify and submit a Vulnerability Assessment of our water system by June 30, 2004. In addition, the Town must prepare a revision to our Emergency Response Plan that incorporates the results of the Vulnerability Assessment, and certify the plan to EPA by December 31, 2004.

Late last year, the Public Works Department solicited statements of qualifications from five selected firms that we thought would be interested in doing this work. Due to the unusual nature of this work, only two firms responded. We began negotiations with the top selected firm but were unable to come to what we thought was a reasonable price to do the work. Subsequently, we began negotiations with the second ranked firm (PBS&J) and were able to reach a satisfactory scope of work and price. A copy of their proposed Professional Service Agreement is attached.

PBS&J is a national firm with a local presence and the resources to complete this project in a timely manner. PBS&J has performed in a very satisfactory manner on a previous project for the Town.

**RECOMMENDATION:**

Staff recommends that the City Manager be authorized to enter into a contract with PBS&J for an amount not to exceed \$31,000 to perform a Vulnerability Assessment of the Town's water system, and suggest appropriate changes to our Emergency Response Plan.



#R12-2

Rev. 10/00

Public Client

## PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT, made and entered into \_\_\_\_\_, by and between Post, Buckley, Schuh & Jernigan, Inc. (PBS&J) and the Client identified herein, provides for the Professional Services described under Item 2 of this Agreement.

CLIENT: \_\_\_\_\_ Town of Addison

ADDRESS: P.O. Box 9010  
Addison, Texas 75001-9010PHONE NUMBER: (972) 450-2879FAX NUMBER: (972) 450-2834CONTACT PERSON: James Pierce

PROJECT NUMBER: \_\_\_\_\_

SHORT TITLE: Water System Vulnerability Assessment

## 1. DESCRIPTION OF PROJECT SITE:

Town of Addison  
\_\_\_\_\_  
\_\_\_\_\_

## 2. SCOPE OF SERVICES TO BE PROVIDED BY PBS&amp;J

(If additional pages are necessary, they are identified as Attachment A):

See Attachment A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 3. THE COMPENSATION TO BE PAID PBS&amp;J for providing the requested services shall be

(If additional pages are necessary, they are identified as Attachment B):

- ☐ Direct personnel expense plus a surcharge of \_\_\_\_\_ %, plus reimbursable costs.\*
- ☐ A Lump-Sum charge of \$ \_\_\_\_\_, plus out-of-pocket expenses.\*
- ☒ Unit Cost/Time Charges identified in Attachment B, plus reimbursable costs.\*
- ☐ Other - See Attachment B.
- \* See explanation under Item 5 below.

4. IF PBS&J's SERVICES UNDER THIS AGREEMENT ARE DELAYED for reasons beyond PBS&J's control, the time of performance shall be adjusted appropriately. Except where the services provided are under a continuous service contract for more than one year, if the services under this Agreement are delayed for a period of more than one (1) year from the beginning date (as above provided), the fees shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

IN WITNESS WHEREOF, this Agreement is accepted on the date written above and subject to the terms and conditions set forth above.

(SIGN WITH BALL POINT PEN)

CLIENT: Town of Addison

SIGNED: \_\_\_\_\_

TYPED NAME: Ron WhiteheadTITLE: City Manager

DATE: \_\_\_\_\_

POST, BUCKLEY, SCHUH &amp; JERNIGAN, INC.

SIGNED: John R. SchenckTYPED NAME: John R. SchenckTITLE: Senior Vice PresidentDATE: 11/13/03



5. **COMPENSATION:** Direct personnel expense shall be defined as: the cost of salaries and fringe benefit costs related to vacation, holiday, and sick leave pay; contributions for Social Security, Workers' Compensation Insurance, retirement benefits, and medical and insurance benefits; unemployment and payroll taxes; and other allowed benefits of those employees directly engaged in the performance of the requested service.

Reimbursable costs include: fees of Professional Associates (whose expertise is required to complete the project) and out-of-pocket expenses, the cost of which shall be charged at actual costs plus an administrative charge of 10% and shall be itemized and included in the invoice.

Typical out-of-pocket expenses shall include, but not be limited to, travel expenses (lodging, meals, etc.), job-related mileage at the prevailing Company rate, long distance telephone calls, courier, printing and reproduction costs, and survey supplies and materials. In the event the requested service involves the use of electronic measuring equipment, computers, plotters, and other special equipment such as boats, swamp buggies, etc., an additional direct charge shall be made for the use of this equipment.

It is understood and agreed that PBS&J's services under this Agreement are limited to those described in Item 2 hereof (and Attachment A, if applicable) and do not include participation in or control over the operation of any aspect of the project. Compensation under this Agreement does not include any amount for participating in or controlling any such operation.

6. **INVOICE PROCEDURES AND PAYMENT:** PBS&J shall submit invoices to the Client for work accomplished during each calendar month. For services provided on a Lump Sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby PBS&J will estimate the percentage of the total work (provided on a Lump Sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for Professional Associates and reimbursable costs. Such invoices shall be submitted by PBS&J as soon as possible after the end of the month in which the work was accomplished and shall be due and payable by the client upon receipt.

The Client, as owner or authorized agent for the owner, hereby agrees that payment as provided herein will be made for said work within 30 days from the date the invoice for same is mailed to the Client at the address set out herein or is otherwise delivered, and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. The Client hereby acknowledges that unpaid invoices shall accrue interest at the maximum retailed by law after they have been outstanding for over 30 days. PBS&J reserves the right to suspend all services on the Client's project without notice if an invoice remains unpaid 45 days after date of invoice. This suspension shall remain in effect until all unpaid invoices are paid in full.

It is understood and agreed that PBS&J's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a supplemental Agreement may be negotiated between the Client and PBS&J describing the services desired and providing a basis for compensation to PBS&J.

7. **COST ESTIMATES:** Client hereby acknowledges that PBS&J cannot warrant that any cost estimates provided by PBS&J will not vary from actual costs incurred by the Client.
8. **LIMIT OF LIABILITY:** The limit of liability of PBS&J to the Client for any cause or combination of causes shall be, in total amount, limited to the fees paid under this Agreement.
9. **CONSTRUCTION SERVICES:** If, under this Agreement, professional services are provided during the construction phase of the project, PBS&J shall not be responsible for or have control over means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; nor shall PBS&J be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for the Contractor's failure to comply with applicable laws, ordinances, rules or regulations.
10. **INSURANCE:** PBS&J shall at all times carry Workers' Compensation insurance as required by statute; commercial general liability insurance including bodily injury and property damage; automobile liability coverage; and professional liability coverage. Insurance certificates will be provided to the Client upon request. Client agrees to require that PBS&J be named as an additional insured on insurance coverages provided by contractors on the project.
11. **ASSIGNMENT:** Neither the Client nor PBS&J will assign or transfer its interest in this Agreement without the written consent of the other.
12. **SUSPENSION, TERMINATION, CANCELLATION OR ABANDONMENT:** In the event the project described in Attachment A, or the services of PBS&J called for under this Agreement, is/are suspended, cancelled, terminated or abandoned by the Client, PBS&J shall be given seven (7) days prior written notice of such action and shall be compensated for the professional services provided up to the date of suspension, termination, cancellation or abandonment in accordance with the provisions of this Agreement for all work performed up to the date of suspension, termination, cancellation or abandonment, including reimbursable expenses.
13. **ENTIRETY OF AGREEMENT:** This writing, including attachments and addenda, if any, embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing signed by both parties hereto.
14. **DOCUMENTS:** Any reuse by the client or others of documents and plans that result from PBS&J's services under this agreement shall be at the Client's or others' sole risk without liability to PBS&J.
15. **WAIVER:** Any failure by PBS&J to require strict compliance with any provision of this contract shall not be construed as a waiver of such provision, and PBS&J may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.
16. **DISPUTE RESOLUTION:** If a dispute arises out of or relates to this Agreement or the breach thereof, the parties will attempt to settle the matter between themselves. If no agreement can be reached the parties agree to use mediation with a mutually agreed upon mediator before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, the prevailing party will be entitled to reimbursement of all reasonable costs and attorneys' fees. The parties mutually agree that a similar dispute resolution clause will be contained in all other contracts executed by Client concerning or related to this contract and all subcontracts executed by PBS&J.
17. **HAZARDOUS WASTE, MATERIALS OR SUBSTANCES:** Unless otherwise specifically provided in this Agreement, PBS&J shall not be responsible for or have control over the discovery, presence, handling, removal, transport or disposal of hazardous waste, materials or substances in any form on the project site.
18. **GOVERNING LAW:** This Agreement shall be governed by and construed according to the laws of the State where the situs of the work is located.
19. **LIMITED COPYRIGHT LICENSE:** PBS&J grants Client a paid-up, non-transferable, non-exclusive license to make or have made copies of any copyrightable materials delivered under this Agreement and specifically marked by PBS&J as "Reproduction Authorized".
20. **INTELLECTUAL PROPERTY:** With the sole exception of specifically marked reproducible materials subject to the Limited Copyright License herein, all worldwide right, title and interest in and to any and all Intellectual Property conceived, invented, authored or otherwise made by or on this Agreement shall remain the sole and exclusive property of PBS&J, its successors and assigns unless licensed or assigned by PBS&J pursuant to a separate written instrument. The term "Intellectual Property" shall be construed broadly to include all forms of intellectual property including without limitation all inventions, discoveries, designs, plans, improvements, trademarks, service marks and copyrights in drawings, computer programs, architectural works and in all other original works of authorship.



**ATTACHMENT A**  
**SCOPE OF SERVICES**  
**TOWN OF ADDISON**  
**WATER SYSTEM VULNERABILITY ASSESSMENT AND**  
**EMERGENCY RESPONSE PLAN UPDATE**

**Phase I - Vulnerability Assessment**

PBS&J proposes to utilize a cost effective process to complete the VA for the Town of Addison that will satisfy EPA requirements. The VA will be performance based, meaning that it will evaluate the risk to the utility system based on the effectiveness (performance) of existing and planned measures to counteract potential adversarial situations. The project approach will address the elements recommended in EPA guidelines including:

- (1) Characterization of the utility system, including its mission and objectives,
- (2) Identification and prioritization of adverse consequences to avoid,
- (3) Determination of critical assets that might be subject to malevolent acts that could result in negative consequences,
- (4) Assessment of the likelihood of identified malevolent acts from adversaries,
- (5) Evaluation of existing countermeasures, including operational procedures and security policies,
- (6) Analysis of current risk and development of a prioritized plan for risk reduction.

Prior to commencing work on-site, the PBS&J team will review available utility system maps, drawings, and data, in an effort to formulate an efficient project plan and schedule. This will include collecting information on existing infrastructure and systems, operational data, policies and procedures, and staffing.

The assessment team will consist of the PBS&J personnel, as well as individuals from the Town of Addison, such as the City Manager, the Director of Public Works, and representatives from the police and fire department, who are familiar with the facilities and existing emergency response plans. The project will begin with a team meeting and discussion with representatives of the pertinent departments, to develop an understanding of system operations and policies, and to gather information from law enforcement representatives and other first-responders. Missions, criteria, and priorities of the utility system will be established as a basis for development of the VA. Information obtained will be used to develop the Design Basis Threat, which will serve as a benchmark that will be used throughout the evaluation process.

Site visits of all water utility facilities and systems will be conducted, during which time any potential risks and hazards will be noted. Existing security features will be identified and reviewed for effectiveness. Following the compilation and review of the field data, the team will again assemble and be briefed.

A comprehensive final VA report will be prepared. The report will provide background information on the VA process and explain its purpose, describe the various water utility facilities, address the threat assessment evaluation and site characterization methods and results, and describe existing security systems effectiveness. It will make general recommendations for security, consequence mitigation, and security recommendations for specific sites, systems, etc. Also included will be a prioritized plan of action with milestones, based upon recommended actions. As required, the report will recommend physical, operational, and procedural upgrades, and provide preliminary cost estimates.

Because many water utilities are operated or administered by local governments, such as the Town of Addison, they are subject to state disclosure laws. Information concerning the security of water utility systems is sensitive, and must be treated as confidential and stored in a secure place. Recommendations for the development of appropriate methods to protect security information and the results of VA will be provided.

## **Phase II – Emergency Response Plan Update**

It is our understanding that the Town of Addison has an ERP that addresses water utility system situations. PBS&J proposes to assist in the updating of the existing plan to incorporate the results of the VA; specifically plans, procedures, and the identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack. This task will also include providing information concerning actions, procedures, and identification of equipment which can lessen the impact of terrorist attacks or other intentional actions on public health and safety and the supply of drinking water.

**ATTACHMENT B**  
**COMPENSATION**  
**TOWN OF ADDISON**  
**WATER SYSTEM VULNERABILITY ASSESSMENT AND**  
**EMERGENCY RESPONSE PLAN UPDATE**

**Phase I and Phase II Services.**

PBS&J proposes to perform Phase I and II of the project on a time and materials basis, with not to exceed fees of \$27,500 and \$3,500, respectively. The compensation to be paid PBS&J for providing Phase I and Phase II services shall be direct personnel expense and equipment expense as defined on the attached Standard Rate Schedule (Attachment 1), plus reimbursable costs.

Reimbursable costs shall be charged at actual costs plus an administrative charge of 10% and shall be itemized and included in the invoice.

The Town will be invoiced monthly according to the hours spent by the personnel or equipment, although the total amount of the contract will not exceed the amounts described above without approval of the Town of Addison.

**Additional Services.**

Compensation for any additional services requested by the Town of Addison not covered by Attachment A will be on the same time and material basis as described above.



## STANDARD RATE SCHEDULE

### PERSONNEL:

Personnel cost is reimbursed based on a multiplier of 2.5 applied to direct personnel expense. Direct personnel expense for each employee is based on the cost of salaries and fringe benefit costs related to vacation, holiday, and sick leave pay; contributions for Social Security, Workers' Compensation Insurance, retirement benefits, and medical and insurance benefits; unemployment and payroll taxes; and other allowed benefits of those employees directly engaged in the performance of the requested service. Ranges of hourly direct personnel expense by personnel classification are as follows:

Principal / Director	\$ 50.00 to \$ 100.00
Senior Engineering Staff	\$ 29.00 to \$ 85.00
Engineering Staff	\$ 19.00 to \$ 55.00
Senior Scientist	\$ 23.00 to \$ 70.00
Scientist	\$ 13.00 to \$ 40.00
Senior Survey Staff	\$ 28.00 to \$ 55.00
Survey Staff	\$ 15.00 to \$ 31.00
Senior Technical Support	\$ 20.00 to \$ 48.00
Technical Support	\$ 11.00 to \$ 28.00
Lab Technicians	\$ 8.00 to \$ 30.00
Senior Clerical / Administration	\$ 24.00 to \$ 45.00
Clerical / Administration	\$ 9.00 to \$ 32.00

### SURVEY FIELD CREWS:

Survey field crews and equipment will be provided at the following fixed hourly rates:

Two-man Field Crew	\$ 95.00 per hour
Three-man Field Crew	\$ 120.00 per hour
Four-man Field Crew	\$ 145.00 per hour
Additional Rodman, Chainman, or Flagman	\$ 25.00 per hour
G.P.S. Static Receivers	\$ 160.00 per day per receiver
G.P.S. RTK System	\$ 400.00 per day

There is no mileage charge when the job site is within 50 miles of the office from which the survey crew originates. OSHA 29 CFR 1910.120 certified field and office personnel are available upon request at an additional cost.

### REIMBURSABLE COSTS:

Reimbursable costs include: fees of Professional Associates (whose expertise is required to complete the project) and out-of-pocket expenses, the cost of which shall be charged at actual costs plus an administrative charge as described in the contract and shall be itemized and included in the invoice.

Typical out-of-pocket expenses shall include, but not be limited to, travel expenses (lodging, meals, etc.), job-related mileage at the prevailing Company rate, long distance telephone calls, courier, printing and reproduction costs, and survey supplies and materials. In the event the requested service involves the use of electronic measuring equipment, computers, plotters, and other special equipment such as boats, swamp buggies, etc., an additional direct charge shall be made for the use of this equipment.

### PROCEDURES AND PAYMENTS:

PBS&J shall submit invoices to the Client for work accomplished during each calendar month. For services provided on a Lump Sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby PBS&J will estimate the percentage of the total work (provided on a Lump Sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for Professional Associates and reimbursable costs. Such invoices shall be submitted by PBS&J as soon as possible after the end of the month in which the work was accomplished and shall be due and payable by the Client upon receipt. The Client agrees that the monthly invoice from PBS&J is correct, conclusive, and binding on the Client unless the Client within twenty (20) working days from the date of receipt of such invoice, notifies PBS&J in writing of alleged inaccuracies, discrepancies, errors in the invoice, or the need for additional backup.

The Client, as owner or authorized agent for the owner, hereby agrees that payment as provided herein will be made for said work within 30 days from the date the invoice for same is mailed to the Client at the address set out herein or is otherwise delivered, and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. The Client hereby acknowledges that unpaid invoices shall accrue interest at the maximum rate allowed by law after they have been outstanding for over 30 days. PBS&J reserves the right to suspend all services on the Client's project without notice if an invoice remains unpaid 45 days after date of invoice. This suspension shall remain in effect until all unpaid invoices are paid in full.

**Council Agenda Item: #R13**

**SUMMARY:**

This item is for the award of a contract to Site Concrete, Inc., in the amount of \$2,536,979.50, for construction of the Spectrum Drive North/South Extension Project.

**FINANCIAL IMPACT:**

Budgeted Amount:                      \$3,100,000 Total - \$2,500,000 from Bond Sale  
    Remaining amount from Unallocated Bond Fund Proceeds

Construction Cost:                      \$2,536,979.50

**BACKGROUND:**

This project was established as part of the Year 2000 General Obligation Bond Program. The portion of Spectrum Drive, from Morris Avenue to Airport Parkway, is a continuation of the second phase of the Addison Circle project. Spectrum Drive will also be extended south, from the DART railroad right-of-way to Arapaho Road. The design of a Quiet Zone at the railroad crossing and streetscape improvements are also included in the project. The firm of Huitt-Zollars, Inc. prepared engineering plans and specifications for construction of these improvements.

Attached is a bid tabulation for this project, using the A + B method. Site Concrete, Inc. submitted the lowest Total bid (A + B), in the amount of \$3,061,979.50. and 210 calendar days. The actual amount of the standard bid (A) recommended for award is \$2,536,979.50. This amount is within the engineering estimate of \$3,183,000. In addition, the Engineer estimated that it would take approximately 270 calendar days to complete a project of this magnitude and complexity. The number of calendar days submitted by Site Concrete, Inc. (210 calendar days) represents a potential reduction of total construction time by approximately 60 days. The base bid includes street lighting improvements that will be installed and maintained by Oncor. An alternate street lighting bid was submitted that would represent Town ownership of the entire lighting system. Staff evaluated the options regarding ownership of the streetlights and determined that it is not economically feasible for the Town to assume permanent ownership. As a result, the base bid only is recommended for award. A street lighting study is currently underway for a uniform street lighting package throughout the Town. Upon completion of the study, staff may recommend that the fixtures and features resulting from the street lighting study replace the lighting system in this contract. This will require a change order.

The contractor is well known and maintains a good reputation. Site Concrete, Inc. was also the low bidder on the Airport Apron Project.

**RECOMMENDATION:**

Staff recommends that Council authorize the City Manager to enter into a contract with Site Concrete, Inc., in the amount of \$2,536,979.50, for the Spectrum North/South Extension Project.





**Council Agenda Item: #R14**

**SUMMARY:**

We are recommending that the Council approve a Supplemental Agreement to the Agreement For Engineering Services, dated January 23, 2001, totaling \$87,291.00 between the Town of Addison and HNTB Corporation for landscape architecture design and surveying services relating to the Arapaho Road Phase III multi-use pedestrian trail pocket parks.

**FINANCIAL IMPACT:**

Budgeted Amount:	<u>\$20,500,000.00</u>	Total Project Cost – Arapaho Rd. (Attachment A)
Cost:	<u>\$70,903.00</u>	Landscape Architecture Fees To Date – Original Agreement (Attached)
	<u>\$87,291.00</u>	Landscape Architecture Supplementary Agreement

Attachment A outlines the complete project budget for Arapaho Road. The 2004 general obligation bond funds are the primary funding source for this project. All remaining funding sources are summarized on Attachment A.

Attachment B summarizes the landscape architecture related design fees to date, and the proposed supplemental fee.

**BACKGROUND:**

The original Arapaho Road Phase III design agreement between the Town and HNTB included landscape architecture design services for the streetscape/multi-use pedestrian trail proposed to extend from Addison Road, west to Surveyor Road. This also encompasses the area underneath the Midway Road Bridge, as well as, a pedestrian connection on each side of the bridge. The Council approved the Agreement, which is attached, in January 2001. The cost for the landscape architecture services portion of the Agreement to date is \$70,903.00.

The attached Supplemental Agreement is for fees relating to the design of the two pocket park parcels including the “Y” track area, the former brickyard storage area, and the area east of the Surveyor Pump Station. These sites are shown on the attached plan on the east and west sides labeled as pocket parks.

Staff intended to wait to complete design and development of these parcels after the road and pedestrian trail were completed; however, it may be in the Town’s best interest from a potential cost savings standpoint to go ahead with design and bidding of the parks with the road and multi-use trail.

**RECOMMENDATION:**

The total landscape architecture fee, including the supplemental fee, is \$158,194.00. This equates to a design fee of 7.9 percent of the estimated construction cost of \$1,987,650. The trail construction cost is estimated at \$1,025,650.00, and the parks are estimated at \$962,000.00. Staff is satisfied with the fee range and fee schedule outlined in the Supplemental Agreement and recommends approval.



## SUPPLEMENTAL AGREEMENT

This Supplemental Agreement, Number 9, to the AGREEMENT FOR ENGINEERING SERVICES, dated January 23, 2001 (the Agreement), between Town of Addison (Owner) and HNTB Corporation (Engineer) is made effective as of the 9th day of December, 2003.

1. Engineer shall perform the following Services:

**A. Landscape Architecture:** Provide Landscape and Pocket Park Design services related to the two parcels of land located at:

- Former brickyard storage area between the two rail road sidings south of proposed Arapaho Road
- East of the Surveyor Water Pumping Station at Surveyor Road and north of proposed Arapaho Road
- Prepare design and construction documents for approx 275 LF of decorative fencing at the storage facility east of Surveyor Road.

**B. Engineering & Surveying:** Provide drainage design improvements, tree and topographical surveying at the following locations:

- Topographical survey at 1 ft contours for the former brickyard storage area between the two rail road sidings south of proposed Arapaho Road
- Locate by coordinate and identify trees larger than 4" caliper at the existing tree stands located on the east and north Dallas Water Utilities property line.
- Improvements to the existing open stormwater channel traversing the Brickyard site and the existing piping and channel at Addison Road.

2. In conjunction with the performance of the foregoing Services, Engineer shall provide the following submittals/deliverables (Documents) to Owner:

### 2.0 LANDSCAPE ARCHITECTURE

#### Task 2.1 Schematic Design

- Minimum of two design concept plans with supporting details and sketches to explain design intent.

#### Task 2.2 Design Development

- Prepare additional detail , probable cost estimate and supporting documents on the selected scheme for final review and approval by the Town

#### Task 2.3 Construction Documents

- Develop construction documents and specifications of the selected concept for inclusion with the final engineering plans.  
Changes to be incorporated into the Construction documents and will be reflected in the interim review submittals.

#### Task 2.4 & 2.5 Bidding and Construction Observation

- Bidding of the park area will be in conjunction with the roadway and trails plans.
- Construction observation tasks related to the park improvements include paving, lighting installation, irrigation installation and testing; walls, benches and other site furniture installation, shop drawing review and approval, answering contractor requests for information.

### **3.0 ENGINEERING & SURVEYING SERVICES**

#### **Task 3.1 Tree Survey**

- The Engineer will perform a tree survey within an area beginning at the end of the retaining wall at approximately paving station 70+50 and extend east to approximately paving station 77+50, or where the RR tracks and proposed roadway cross. The trees that will be located are those that are outside the roadway, to the north, but inside the right of way. The trees along the existing drainage ditch south of the proposed roadway at paving station 78+00 extending to the existing headwall will also be surveyed.
- The survey will identify the size and type of all trees greater than or equal to 4 inches in diameter. (Note: The tree type will be ascertained through the best judgement of Engineers survey crew; no arborist work is included in this proposal).
- The survey will be provided in digital format.
- Tree mitigation is not included in this scope of services.

#### **Task 3.2 Topographical Survey**

- The Engineer will prepare a topographic survey of the remainder of the 'Y' track area not previously surveyed for the project. This area can be defined as south of the existing east-west drainage swale to the limits of the 'Y' track.
- Additional topographic survey of the existing culverts under the tracks and a portion of the swales on the outside of the 'Y' track area will also be performed in order to complete the necessary drainage revisions in this area. The extent of the swale survey is limited to determining the drainage patterns in the area.

#### **Task 3.3 Stormwater Engineering**

##### **Addison Road Drainage**

The Engineer will incorporate a portion of the drainage from Addison Road into the Arapaho Road Phase 3 plans. The following work will be performed:

- Incorporate the cleaning/flushing of the existing 60" RCP in the plans and specifications. The cleaning/flushing should remove all sediment from the existing RCP.
- It is assumed that the most current Addison Road design plans will be provided to the Engineer from the Town. No drainage calculations will be performed for the Addison Road system.

##### **'Y' Track Drainage**

The Engineer will incorporate into the Arapaho Road Phase 3 plans the drainage within the 'Y' track area. The following design will be performed:

- Analyze and design a closed storm sewer system from the existing culvert under the east 'Y' track, across the proposed park area to the existing culvert under the west 'Y' track, which will replace the drainage ditch which connects these culverts.
- This system must allow for the drainage of the area within the 'Y' tracks, as well as drainage from outside the 'Y' track area.
- Size an open channel from the outfall of the existing 'Y' track west culvert and the existing 60" RCP to the proposed headwall of the Arapaho Road storm sewer system, near paving station 78+50.

3. Engineer shall perform the Services and deliver the related Documents according to the following schedule:

**Notice to Proceed**

December 10, 2003

**Task 2.1 Schematic Design**

**Task 3.1 & 3.2 Tree Surveying / Topo Survey**

- Review Schematic Park Designs w/ Staff

January 8, 2004

**Schematic Design Approval by Council**

January 13, 2004

**Task 2.2 Design Development**

**Task 3.2 Stormwater Engineering**

- Submit 65% Construction Documents

February 13, 2004

**Task 2.3 Construction Documents**

- Submit 95% Construction Documents
- Submit 100% Construction Documents
- Submit Final Construction Documents

March 5, 2004

March 26, 2004

April 16, 2004

4. In return for the performance of the foregoing obligations, Owner shall pay to Engineer the owing amount indicated below, payable according to the following terms:

**Task 2.0 Landscape Architecture**

**\$69,008.00**

**Task 3.0 Engineering & Surveying**

**\$18,283.00**

**Total Fee**

**\$87,291.00**

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

\_\_\_\_\_  
(Owner)

HNTB Corporation  
(Engineer)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **SUPPLEMENTAL AGREEMENT**

Cost breakdown

SEE ATTACHED HOUR / FEE SCHEDULE

**ARAPAHO ROAD EXTENSION  
PHASE III  
SURVEYOR BOULEVARD PUMP STATION and BRICKYARD  
ESTIMATE OF MANHOURS  
FINAL DESIGN - PARK AREAS**

	Group Director	Design Director	Senior LA	LA 3	LA 2	
<b>Task 2. Final Design- Park Areas</b>						
<b>Task 2.1 Schematic Design</b>						
A. Kickoff/Programming Meeting		4	4	4		12
B. Schematic Park Master Plan	4	16	32	24	24	100
C. Schematic Plan Review Meeting		4	4		4	8
<b>Task 2.2 Design Development</b>						
A. Prepare Design Development Package	4	16	24	40	24	108
B. Prepare Opinion of Probable Construction Costs			8	12	12	32
C. Design Development Plan Review Meeting		4	4	4		12
<b>Task 2.3 Construction Documentation</b>						
A. Prepare Construction Documents		24	24	60	60	168
B. Prepare Technical Specifications			12	8	8	28
C. Prepare Revised Opinion of Probably Cost			2	12	8	22
D. Construction Document Review Meeting		4	4	4		8
<b>Task 2.4 Bid Phase</b>						
A. Prepare List of Qualified Sub-Contractors			4	8	4	16
B. Prepare Addenda			4	8		12
C. Assist Owner in Evaluation of Bids						
D. Value Engineering/Substitutions						
<b>Task 2.5 Construction Observation</b>						
A. Kickoff Meeting			4	4		8
B. Review Submittals; Tag Trees						
C. Review Information Requests						
D. Review Work Progress			8	24	16	48
E. Prepare Punchlist			4	8	8	20
F. Punchlist Review				8	4	12
G. As-Builts - Project Closeout				16	24	40
<b>Task 2 Total Hours</b>	8	72	142	244	196	654
<b>Hourly Rate</b>	\$61.57	\$34.85	\$41.54	\$29.00	\$18.19	
<b>Direct Labor Cost</b>	\$493	\$2,509	\$5,899	\$7,076	\$3,565	

**Final Design - Park Areas** **\$19,542**

**Direct Labor - Parks** @ \$19,542 x 2.94 = \$57,453

**Direct Labor - Fence** @ \$ 2,535 x 2.94 = \$ 7,453

**Direct Costs**

Printing \$ 1,500  
Mileage 250 mi @ \$.36 = \$ 90  
Irrigation Upgrade at Park Areas \$ 2,500  
Tolls \$ 12

**TOTAL** \$ 4,102

LUMP SUM LABOR - PARKS \$57,453  
DIRECT COSTS \$4,102  
STORAGE AREA FENCE DESIGN \$7,453  
**TOTAL LABOR and DIRECTS** **\$69,008**



**ATTACHMENT A**  
**ARAPAHO RD - MARSH LN TO ADDISON RD - PROJECT BUDGET**

<b>Project Budget</b>	<b>Project #</b>
<b>Description</b>	<b>Amount</b>
Bond Funds	\$20,500,000
County funds	\$1,432,812
Dart Lap Funds 2001-2003	\$1,046,000
Morris Road available funds	\$300,000
Addison Road/Excel	\$230,000
Reprogrammed DART LAP Funds	\$1,189,625
Total available funds	\$24,698,437
<b>Phase II, Marsh to Surveyor</b>	
HNTB initial fee	(\$294,124)
HNTB Urban Design (streetscape)	(\$29,000)
Supplementary Agreement #1	(\$1,556)
Supplementary agreement #2	(\$2,845)
Supplementary agreement #3	(\$19,959)
Nile Properties, Ltd. Parcel #15	(\$1,367,000)
TXU Electric Parcel #16	\$0
Lincoln Trust Company Parcel #17	(\$35,019)
Aetna Life Insurance Company Parcel #18	(\$66,619)
Racetrac Petroleum Parcel #19	\$0
AMB Property II, L.P. Parcel #20	(\$25,978)
ARS	\$0
construction cost	(\$2,200,000)
Pat Haggerty	(\$2,125)
Hipes & Associates	(\$10,070)
Evaluation Associates	(\$8,500)
Audit and Legal Fees	(\$100,622)
Niles Property Environmental report	(\$2,300)
Niles Property Demolition	(\$51,000)
<b>Sub Total</b>	<b>(\$4,216,716)</b>
<b>Phase III, Surveyor to Addison Road</b>	
ROW analysis	(\$44,977)
HNTB Design Fee	(\$813,785)
Evaluation Associates	(\$39,000)
<b>HNTB Urban Design (Multi-Use Trail/Streetscape)</b>	<b>(\$70,903)</b>
Metro Brick Parcel #1	(\$95,150)
Joe's Auto Body Parcel #2	(\$173,202)
Union Pacific Railway Company Parcel #3	(\$1,204,217)
The City of Dallas Parcel #4	(\$13,018)
Heritage Inn Parcel #5	(\$60,868)
Motel 6 Parcel #6	(\$463,244)
Charter Furniture Parcel #7	(\$166,446)
Gary Crouch/MBNA Parcel #8	(\$62,381)
John Wilson Parcel #9	(\$112,000)
Harbour Group Parcel #10	(\$29,768)
Dale Bullough/Metrocrest 1 Parcel #11	(\$29,357)
Public Storage of Dallas, Ltd. Parcel #12	(\$1,583,210)
Public Storage of Dallas, Ltd. Parcel #13	included in #12
Audit and Legal Fees	(\$25,000)
Road way construction	(\$8,047,085)
Bridge Construction	(\$5,000,000)
Bridge Design	(\$550,965)
<b>Multi-Use Trail/Streetscape Construction</b>	<b>(\$1,200,000)</b>
Bridge Design Stipend	(\$30,000)
URS bridge concept meeting	(\$19,570)
Wye Track Crossing Fee	(\$2,500)
Environmental reports	\$0
Hipes & Associates	\$0
Pat Haggerty	(\$2,805)
Evaluation Associates	(\$21,750)
Bridge Pre-Submittal meeting @ Stone Cottage	(\$706)
<b>Total, Phase III</b>	<b>(\$19,861,907)</b>
<b>Total Expenses</b>	<b>(\$24,078,623)</b>
<b>Total over/under budget</b>	<b>\$619,814</b>
Spui	\$2,000,000
Midway Road	\$1,000,000
Total funds remaining if needed	\$3,000,000

**Attachment B - Arapaho Phase III  
Landscape Architecture Fee Summary  
Multi-use Pedestrian Trail and Pocket Parks**

<b><u>Project</u></b>	<b><u>Design Fee</u></b>
Existing Agreement Multi-Use Pedestrian Trail and Streetscape Addison Road to Surveyor Road	\$70,903.00
Proposed Supplementary Agreement Pocket Parks - "Y" Track Area (Brickyard) and Parcel East of Surveyor Pump Station	<u>\$87,291.00</u>
Total Landscape Architecture Design Fee	\$158,194.00
Design Fee as a Percentage of Construction Costs	<b>7.90%</b>
<b><u>Project</u></b>	<b><u>Estimated Construction Cost</u></b>
Estimated Construction Costs Multi-Use Pedestrian Trail and Streetscape Addison Road to Surveyor Road	\$1,025,650.00
Pocket Parks - "Y" Track Area (Brickyard) and Parcel East of Surveyor Pump Station	<u>\$962,000.00</u>
	\$1,987,650.00
<b><u>Pocket Park Area Calculation</u></b>	<b><u>Square Feet/Acres</u></b>
"Y" Track (Brickyard)	165,000 sq.ft./3.78 acres
Parcel East of Surveyor Pump Station	38,000 sq.ft./.87 acres

## **AGREEMENT**

THIS AGREEMENT is made by and between HNTB Corporation, hereinafter called "ENGINEER", and the Town of Addison, Texas, hereinafter called "OWNER."

WHEREAS, Owner desires Engineer to perform certain work set forth in Section 2, Scope of Services.

WHEREAS, the Engineer has expressed a willingness to perform said services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Section 2 of this Agreement.

NOW, THEREFORE, all parties agree as follows:

### **SECTION 2. SCOPE OF SERVICES**

The following Basic and Additional Services, when authorized in writing by a notice-to-proceed, shall be performed by the Engineer in accordance with the Owner's requirements for design of Arapaho Road from Surveyor Boulevard to Addison Road.

#### **I. Project Definition**

This project consists of the preparation of plans and specifications for bidding and construction of Arapaho Road Phase III from Surveyor Boulevard to Addison Road (the Project). The project will be a 4-lane reinforced concrete roadway, with turn lanes at Surveyor Boulevard and Addison Road. A grade separated intersection will be provided at Midway Road. The design of the bridge over Midway Road is not included in this scope of services. Services will generally include geotechnical investigation and recommendations; final construction plans for the roadway, structure, stormwater, water, wastewater, landscaping, irrigation, traffic signals, construction sequencing, signing and striping; bid document originals; record drawings; and coordination with franchised utilities, the Town of Addison, and applicable agencies.

#### **II. Detailed Scope of Basic Services**

The improvements have been implemented in several phases consistent with the availability of funds to complete final construction plans and specifications and to finance the construction. The scope of services for the schematic design are described in a separate scope of services and Agreement between the Town of Addison and HNTB Corporation executed February 12, 1997 with official authorization to proceed dated March 9, 1998. The basic scope of services for construction documents from Marsh Lane to Surveyor Boulevard (Phase II) are described in a separate scope and Agreement executed October 18, 2000 between the Town of Addison and HNTB Corporation.

### **A. Phase III Final Design – Paving, Drainage, and Utilities**

1. Prepare final construction drawings. (Scale 1" = 20' Horizontal and 1" = 5' Vertical except as noted.) The plans will be designed to meet current ADA requirements. The following sheets shall be included:
  - a. Cover Sheet
  - b. General Notes
  - c. Quantity Sheets
  - d. Removal Plans
  - e. Typical Sections
  - f. Construction Phasing (Scale 1" = 40')
  - g. Survey Control
  - h. Utility Relocation Plan
  - i. Paving Plan and Profile Sheets
  - j. Paving Details
  - k. Signing and Striping Plans (Scale 1" = 40')
  - l. Erosion Control Plans
  - m. Grading Plan
  - n. Driveway and Special Grading Sheets
  - o. Drainage Area Map (Scale 1" = 100')
  - p. Stormwater Plan and Profile Sheets
  - q. Roadway Cross Sections
  - r. Street Lighting Plan

2. Prepare Contract Documents
3. Prepare Estimate of Final Construction Cost
4. Submit four (4) sets of plans for review to the Owner for 65% review, 95% review, and 100% (final).
5. Incorporate Owner's review comments into plans after each submittal.

## **B. Streetscape**

Engineer's understanding is the Project will consist of right-of-way improvements for Arapaho Road from Surveyor Boulevard to Addison Road. The current R.O.W. will be widened in some areas allowing for additional landscaping. Proposed streetscape improvements will utilize the existing Town Landscape Ordinance and guidelines. Critical visibility concerns shall be incorporated into the overall roadway improvements.

This proposal does not include architectural improvements related to the proposed bridge spanning Midway Road. These improvements may be added at a later date by the Owner through a supplemental agreement..

### Basic Services

1. Schematic Design
  - a. Engineer will attend a kickoff / programming meeting with the Owner to discuss the project requirements and to acquire information required to develop the schematic landscape master plan for Phase III.
  - b. Based on initial programmatic meetings with the Owner, Engineer will proceed with site development concepts to develop a schematic landscape master plan. Schematic design plans will be drawn at a scale sufficient to explain design intent. The drawings to be produced will be one rendered site plan and necessary cross sections and enlarged plans as required to explain design intent.
  - c. Engineer will meet with the Owner to present the schematic landscape master plan and will receive comments from staff for incorporation into the design development package.



## 2. Design Development

a. Based on the approved schematic design, Engineer will prepare a design development package. This package will include the following:

- Materials plan
- Site grading plan
- Site walls/entry features
- Hardscape/paving
- Site lighting (location and fixture type)
- Landscape plan
- Critical cross-sections

This package will include an appropriate level of detail to illustrate design character, intent, means, materials and construction methods sufficient to further refine probable construction costs.

- b. Engineer will prepare an opinion of probable construction costs based on design development drawings.
- c. Engineer will meet with the Owner to review the design development package and will receive comments from staff for incorporation into the construction document package.

## 3. Construction Documentation

a. Based on the approved design development package, Engineer will prepare contract documents sufficient to describe the work necessary for construction. The following drawings will be prepared:

- Layout and materials plan
- Enlarged intersection layout & materials plan, if required.
- Grading plan for the R.O.W. improvements
- Enlarged intersection grading plan, if required.
- Planting plan
- Enlarged intersection planting plan, if required.
- Irrigation plan
- Enlarged intersection irrigation plan, if required.
- Site lighting (location & fixture type)
- Details and sections at appropriate scales necessary to convey the sizes, appearances, finishes, and colors of all pavements, walls, site furnishings, and light fixtures.
- Coordinate structural details and incorporate on plans to be approved by structural.

- b. Engineer will prepare technical specifications describing all elements of the proposed work.

- c. Engineer will prepare a revised opinion of probable construction costs based on design development drawings.
  - d. Engineer will meet with the Owner to review the construction document package and will receive comments from staff for finalizing the construction document package.
4. Construction Observation
- a. Engineer will attend a kickoff meeting with the Owner, the selected landscape / hardscape subcontractor and General Contractor to review the project requirements, schedule and responsibilities.
  - b. Engineer will review and approve subcontractor submittals regarding landscape and hardscape material specified for the streetscape project and keep logs for submittals.
  - c. Engineer will coordinate the preparation of record drawings with the landscape / hardscape contractor, review for completeness and issue to the Owner with all records of construction developed for the project based on documents delivered to Engineer by such contractor. This will constitute the project close out of the construction phase.
6. Additional Services
- The following services are not included in the scope of basic services. Engineer shall provide these services if authorized in writing by the Owner on a time and expense in addition to the compensation for Basic Service.
- Illustrative renderings beyond those described in the Basic Services.
  - Zoning changes or variances

**C. Bidding and Contract Award**

1. Prepare Advertisement for Bidders.
2. Provide 25 half-size sets of plans and bid documents.
3. Conduct pre-bid meeting.
4. Prepare necessary addenda and respond to bidder's questions.
5. Prepare bid tabulation.
6. Recommend a bidder for the award of the construction contract after performing reference checks.

**D. Construction Administration**

1. Provide three (3) full-size and five (5) half-size sets of plans and specifications for Owner.
2. Provide two (2) full-size and three (3) half-size sets of plans and specifications for Contractor.
3. Conduct pre-construction meeting.
4. Respond to Requests for Information.
5. Review submittals, as required by the contract documents.
6. Provide construction administration and observation services.
7. Attend final inspection and prepare punch list.
8. Prepare mylar record drawings and electronic files.

**III. Detailed Scope of Additional Services**

**A. Surveying**

1. Update property ownership, to include current ownership. Any subdivision of the existing parcel will be addressed on a case by case basis.
2. Stake centerline at 50-foot intervals with PC's and PT's prior to geotechnical borings performed in field.
3. Locate bore holes horizontally and vertically.
4. Cross sections of Arapaho Road at Midway Road to include lane shots.
5. Project management and administration for surveying elements.

**B. Geotechnical Investigation**

The geotechnical services will include the following: field investigation, laboratory testing and engineering analysis in order to develop recommendations to guide design and construction of Arapaho Road.

1. Field Investigation

Drill and sample 25 borings for this project. The following table summarizes the proposed number of borings for the various structures.

<b>Proposed Structure</b>	<b>Total Number of Borings</b>
Bridge	7
Retaining Walls and Box Culvert	14
Pavement	4

The bridge borings will be advanced a depth of 20 feet into unweathered gray limestone. The bridge borings are therefore anticipated to extend to a total depth of approximately 35 feet. The retaining wall box culvert borings will extend to a depth of 15 feet. The pavement borings will extend to a depth of 10 feet or 5 feet into weathered limestone, whichever is encountered first.

The borings will be continuously sampled to a depth of 6 feet, and at 5-foot intervals thereafter and/or at each change in the stratum until boring termination. The soil samples will be obtained with thin-walled tube and/or split-spoon samplers, depending upon the soil type and consistency.

The bedrock in the bridge borings will be continuously cored. Samples of the bedrock from the other borings will be obtained from the auger cuttings. Texas Cone Penetrometer (TCP) tests will be performed at 5-foot intervals to evaluate the bearing properties of the bedrock.

The drill crew foreman will record the depth that seepage water is encountered during drilling. Water level readings will also be obtained from each boring at drilling completion. The boreholes will be backfilled with auger cuttings after the water level readings are obtained.

It is understood that ARS Engineers (ARS), the project surveyor, will stake the centerline of the roadway alignment to assist us in locating our borings in the field. Terra-Mar will then stake the boring locations. The boring locations will be marked in the field so that ARS can determine the boring coordinates and ground surface elevations following the field exploration program.

Owner shall coordinate with the Engineer to obtain right-of-entry to the property so that the boring locations will be accessible to our conventional truck-mounted drilling equipment during normal working days. Traffic control services shall be Additional Services if required to complete the borings.

The drilling operations will proceed in a manner that will avoid the potential of damage to underground utilities. Owner shall provide any information regarding any of their existing underground utilities that are present on-site prior to Engineer beginning the fieldwork. Engineer will coordinate underground utility line clearance with the Texas Excavation Safety System, the Owner, Dallas Water Utilities, and Dallas Area Rapid Transit (DART), and any other utility companies known to be in the area. However, Engineer will not be responsible for damage to underground utility lines that are not properly identified prior to mobilization of drilling equipment to the site.

## 2. Laboratory Testing

The project geotechnical engineer will classify the samples recovered from the field investigation in the Terra-Mar laboratory. A laboratory testing program will then be implemented to evaluate the pertinent engineering properties of the encountered deposits. Laboratory testing will include liquid and plastic limit, moisture content, unconfined compression, and calibrated penetrometer tests. Lime series tests will be performed to determine the optimum lime content for subgrade stabilization

## 3. Engineering Analyses and Report

The results of the field investigation and laboratory testing programs will be evaluated to provide recommendations for design and construction of the roadway. The results of this investigation will be presented in an engineering report. Three copies of the report will be submitted to the Owner. The report will include the following:

- a. Logs of borings in TxDOT “WinCore2” electronic format, laboratory test results, borehole water level observations, and a plan of borings.
- b. Recommendations for design of drilled shaft bridge foundations, including allowable bearing resistance, estimated depth of bearing stratum, and estimated foundation settlement.
- c. Recommendations for design of mechanically stabilized earth retaining wall foundations that will include allowable bearing pressures, sliding resistance, global stability, and estimated settlement.
- d. Recommendations for design of the box culvert, including equivalent fluid pressures and allowable bearing pressures.
- e. Recommendations for retaining wall and box culvert backfill soil types, backfill placement, and compaction.



- f. Evaluation of the impact of the box culvert on the performance of the proposed pavement section, including recommendations for reducing the amount of differential movement between sections of the roadway supported over the box culvert and box culvert backfill, and sections supported on the existing subgrade soils.
- g. Recommendations for pavement subgrade preparation.
- h. Recommendations for Portland cement concrete pavement sections. Owner will arrange to provide the anticipated traffic loading for use in our analysis.
- i. Discussion of potential construction problems, such as hard rock excavation, groundwater, and subgrade instability.

### **C. Traffic Study**

#### *a. Signal Design Layout*

- 1. Prepare preliminary traffic signal design plans and specifications for intersection of Arapaho Road at Addison Road to include railroad preemption. Plans and specifications will be prepared using Owner standards.
- 2. Review plans and specifications with Owner and revise as necessary. Prepare final plans, specifications, construction estimates and contract documents for installation of traffic signals throughout project limits.

#### *b. Traffic Signal Data Collection*

- 1. Collect AM peak period (6:30 – 9:00 AM) and PM peak period (4:00 PM – 6:30 PM) turning movement counts in 15 minutes intervals, including pedestrian counts, for two representative intersections. These intersections will provide a general understanding of the volume of traffic and traffic characteristics of the area.
- 2. Compile the existing traffic turning movement counts for the AM and PM peak hour time periods and determine the existing AM and PM peak hours, peak hour factors and percent trucks for each intersection. Balance the traffic turning movement counts for Phase II and Phase III for the AM and PM peak hours. Prepare base maps for Phase II and Phase III illustrating the existing peak hour turning movement counts, intersection geometrics, speed limits, distances between intersections, percent trucks, peak hour factor, and existing traffic signal phasing. Compile the existing traffic signal timing plans to determine the existing traffic signal

phasing, cycle length, minimum and maximum green times, yellow times, all-red times, walk times and flashing don't walk times.

*c. Initial Traffic Analysis – Segment 1 (West of Midway Road)*

1. Analyze the three signalized intersections in Segment 1, (Marsh, Surveyor, and Beltline/Marsh) utilizing an interactive process to provide coordinated traffic signal timings without sacrificing level of service for the minor traffic movements. More specifically, the following process will be utilized for both the AM and PM peak hours:

- SIGNAL2000- Design optimum cycle length, phasing and green times for each isolated intersection such that all movements operate at LOS D or better.
- NOSTOP – With the green splits designed in SIGNAL2000, use this program to determine the optimum cycle length to provide maximum progression on the corridor.
- SIGNAL2000 – Rerun, if necessary, if the cycle length is different through NOSTOP than originally assumed.
- TRANSYT-7F – Holding the cycle length and green splits constant, run this program to optimize offsets to provide progression for the highest volume movements (minimize system delay).

Summarize the results with measure of effectiveness tables and phasing/timing diagrams and illustrate the train preemption phasing.

2. Jack Hatchell & Associates will assist the Engineer in a management role consisting of technical assistance and plan review for traffic signal timing plan for Arapaho Road from Marsh Lane to Surveyor Boulevard and Marsh Lane from Beltline Road to Arapaho Road.

*d. Initial Traffic Analysis – Segment 2 (East of Midway Road)*

1. Analyze the six signalized intersections in Segment 2 of Phase III, (Addison, Edwin Lewis, Quorum, Spectrum, Addison/Lindberg, and Addison/Beltline) utilizing an interactive process to provide coordinated traffic signal timings without sacrificing level of service for the minor traffic movements. The goal will be to provide traffic signal progression along the three signalized intersections along Addison Road and the four signalized intersections along Arapaho Road. The following process for both the AM and PM peak hours:

- SIGNAL2000- Design optimum cycle length, phasing and green times for each isolated intersection such that all movements operate at LOS D or better.

- NOSTOP – With the green splits designed in SIGNAL2000, use this program to determine the optimum cycle length to provide maximum progression on the corridor.
- SIGNAL2000 – Rerun, if necessary, if the cycle length is different through NOSTOP than originally assumed.
- PASSERII – Holding the cycle length and green splits constant, run this program to optimize the offsets for through movement progression on Addison Road and Arapaho Road. Two runs will be completed consisting of one run for Addison Road and one run for Arapaho Road.
- TRANSYT-7F – This program will be used to combine the two PASSERII runs and fine-tune the offsets for higher volume turning movements (minimize system delay).

Summarize the results with MOE tables and phasing/timing diagrams. Illustrate the train preemption phasing.

2. Jack Hatchell & Associates will assist the Engineer in a management role consisting of technical assistance and plan review for traffic signal timing plan for Addison Road from Beltline Road to Lindberg and for Arapaho Road from Addison Road to Spectrum. Assist Engineer with coordination with railroad and traffic signal design for railroad preemption.

*e. Technical Memorandum*

Document the procedures, findings and recommendations of the traffic signal timing analysis, with exhibits, tables and text in a technical memorandum. The technical memorandum will also include an appendix with the traffic software output.

**Note:** Additional information on the Traffic Study is included in Exhibit B.

## **D. Phase I Environmental Site Assessment**

See Exhibit A for detailed description.

## **E. Construction Observation**

- It is anticipated the Owner will require assistance with construction observation throughout the construction duration. Two separate Construction Observation tasks are included. The first will be full-time bridge construction observation. The second will be half-time roadway construction observation. Full-time is 40 hours per week throughout the duration the construction schedule. Half-time is 20 hours per week throughout the duration the construction schedule. The bridge construction is estimated to take twelve months. The roadway construction is estimated to take fifteen months. If the

duration differs from these estimates, the compensation shall be adjusted accordingly. The following tasks would be performed by this task. A supplemental agreement will have to be completed prior to the pre-construction meeting.

- Monitor construction activities including office/on-site observations during construction operations. This effort will be performed in association with the Owner's staff to supplement their own inspection staff.
- The Engineer's construction representative and staff shall be stationed in Engineer's offices for the administration of the contract documents.
- The Engineer's construction representative shall assist in working with the Contractor to address RFI's, shop drawings, and related questions concerning design issues to support timely response and resolution of issues
- The Project construction representative shall assist in monitoring the construction schedule on an ongoing basis at bi-weekly intervals based upon a 12-month construction schedule, and report to the Owner on matters that may lead to delays and deficiencies.
- Review requests for alternatives and substitutions from the Contractor and submit them, together with Engineer's recommendations, to Owner for consideration.
- Review and make recommendations on contractor submitted shop drawings.
- Observe bridge construction and related components.
- Observe construction to determine in general if the Work is proceeding in such a manner indicating that when completed it will be in accordance with requirements of the contract documents.
- Conduct observations to determine an estimate of percent completion.
- Prepare preliminary and final deficiencies lists at intervals during the overall Project duration.
- Based on observations and evaluations of the Contractor's applications for payment, the Project construction representative shall review and certify the amounts due the Contractor.

## **F. Coordination with third-party for bridge design**

If the Town of Addison chooses to have a third party design the bridge over Midway Road it will require a coordination effort between HNTB and the third party. The Town has requested an estimate of how much time it would take for coordination between the Engineer and the third-party bridge designer. This estimate is for meetings with the third party, information sharing, transfer of files (electronic, including CAD), notes and sketches, and meetings with the Town to incorporate ideas into the bridge. This estimate is not for the design of any elements of the bridge that are developed through these meetings or by the third party. We have based our estimate on a total of 140 hours over the course of the design. The estimated amount would be approximately \$17,500.

### **SECTION 3. PAYMENT**

Owner shall pay Engineer for services authorized in writing as properly performed by Engineer on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing.

#### ***Basis of Compensation***

Owner shall make payment monthly to Engineer based upon statements submitted by the Engineer for work performed.

Compensation for performing Basic and Additional Services shall be as shown in Exhibit A on a Lump Sum amount of \$602,725. Additional Services for Construction Observation shall be as shown in Exhibit A on a Cost-Plus basis not to exceed \$211,060 based upon an hourly rate with a 2.92 multiplier to cover labor, overhead, and profit. The total contract amount shall not exceed \$813,785.00 unless amended by both parties.

### **SECTION 4. RESPONSIBILITIES**

Engineer shall be responsible for the professional quality, technical accuracy, and the coordination of the design, drawings, plans, specifications, estimates, and other services furnished by Engineer under this Agreement. Engineer shall, without additional compensation, correct or review any errors or deficiencies that are attributable to the Engineer in such design, drawings, plans, specifications, estimates, and other services.

Neither Owner's review, approval or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Engineer shall be and remain liable to Owner in accordance with applicable law for all damages to Owner caused by Engineer's negligent performance of any of the services furnished under this Agreement.

The rights and remedies of Owner and Engineer under this Agreement are as provided by law. Engineer shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project.

### **SECTION 5. TIME FOR PERFORMANCE**

Engineer shall perform all services as provided for under this Agreement in a proper, efficient and professional manner in accordance with the terms of this Agreement. The

services to complete construction documents shall be completed within 10 months of Notice-to-Proceed.

In the event Engineer's performance of this Agreement is delayed or interfered with by acts of the Owner or others, Engineer may request an extension of time for the performance of same as hereinafter provided. If such delay is in excess of 60 days on any one occurrence or a cumulative delay of over 180 days, Engineer shall have the right to renegotiate the remainder of this contract. A delay shall be defined as any event caused by others that substantially inhibits the Engineer from proceeding with its services on the project. This shall include, but is not limited to, Owner reviews, right-of-way negotiations and awaiting critical information to be supplied by Town or franchised utility companies.

No allowance of any extension of time, for any cause whatever, shall be claimed or made by the Engineer, unless Engineer shall have made written request upon Owner for such extension within 14 calendar days after the cause for such extension occurred, and unless Owner and Engineer have agreed in writing upon the allowance of additional time to be made. Provided, however, Engineer shall not be considered in default hereunder in delays are caused by reasons beyond its reasonable control.

#### **SECTION 6. DOCUMENTS**

All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer files, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of the Owner. All completed instruments of service shall be professionally sealed as may be required by law or by Owner.

Such instruments of service, together with necessary supporting documents, shall be delivered to Owner, and Owner shall have unlimited rights, for the benefit of Owner, in all instruments of service, including the right to use same on any other work of Owner without additional cost to Owner. If, in the event, Owner uses such instruments of service on any work of Owner other than that intended in the Scope of Services, defined in Section 2, under those circumstances Owner hereby agrees to protect, defend, indemnify and hold harmless the Engineer, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of service with respect to such other work except where Engineer is hired to modify such instrument for such other work.

Engineer agrees to and does hereby grant to Owner a royalty-free license to such instruments of service which Engineer may cover by copyright and to designs as to which Engineer may cover by copyright and to designs as to which Engineer may assert any rights or establish any claim under the design patent or copyright laws. Engineer, after completion of the services, agrees to furnish the originals of such instruments of service



to the Owner. Engineer may, however, retain copies of any and all documents produced. The license granted herein by Engineer shall survive termination of this Agreement for any reason.

#### **SECTION 7. TERMINATION**

Owner may suspend or terminate this Agreement for cause or without cause at any time by giving five (5) days written notice to the Engineer. In the event termination is for cause however, such shall be in accordance with section 14 hereof. In the event suspension or termination is without cause, payment to Engineer, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Owner to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Owner.

Should the Owner require a material modification of this Agreement, and in the event Owner and Engineer fail to agree upon such modification to this Agreement, Owner shall have the option of terminating this Agreement and the Engineer's services hereunder at no additional cost other than the payment to Engineer, in accordance with the terms of this Agreement, for the services reasonably determined by Owner to be properly performed by the Engineer prior to such termination date.

Engineer may terminate this Agreement upon written notice to Owner in the event of substantial failure by the Owner to perform in accordance with the terms of this Agreement. Owner shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the Engineer. In the event the parties cannot agree upon an acceptable cure within a reasonable period of time from the date of notice, Engineer may terminate this Agreement.

#### **SECTION 8. INSURANCE**

Engineer shall provide and maintain Worker's Compensation and Employer's Liability Insurance for the protection of Engineer's employees, as required by law. Engineer shall also provide and maintain in full force and effect during the term of this Agreement, insurance (including insurance covering the operation of automobiles, trucks and other vehicles) protecting Engineer and Owner against liability from damages because of injuries, including death, suffered by any person or persons other than employees of Engineer, and liability for damages to property, arising from or growing out of Engineer's operations in connection with the performance of this Agreement.

Such insurance covering personal and bodily injuries or death shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for one (1) person, and not less than Three Hundred Thousand Dollars (\$300,000.00) for any one (1) occurrence. Insurance covering damages to property shall be in the sum of not less Three Hundred Thousand Dollars (\$300,000.00) aggregate.

Engineer shall also provide and maintain Professional Liability Insurance coverage to protect Engineer from liability arising out of the performance of professional services under this Agreement. Such coverage shall be in the sum of not less than \$1,000,000.00.

A signed Certificate of Insurance, showing compliance with the requirements of this Section, shall be furnished to Owner before any services are performed under this Agreement. Such Certificate of Insurance shall provide for ten (10) days written notice to Owner prior to the cancellation or modification of any insurance referred to therein. Such Certificates shall terminate after completion of the project.

Owner shall be named as an "additional insured" party on all insurance policies, except for Worker's Compensation and Professional Liability policies.

#### **SECTION 9. INDEMNIFICATION FOR INJURY AND PERFORMANCE**

Engineer further specifically obligates itself to Owner in the following respects, to wit:

The Engineer hereby agrees to protect, indemnify and hold harmless the Owner, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from and against losses, liability or damage of any character, including defense costs, expenses and attorney fees incidental to the defense of such losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including the loss of use resulting therefrom, from any negligent act, error, or omission of the Engineer, its officers, employees, or subcontractors, or anyone else for whom Engineer is legally liable which are resulting from or caused by the performance of any services called for by this Agreement. In the event the parties are found to be jointly or derivatively negligent or liable for such damage or injury, the indemnification shall be assessed on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

The Engineer is not responsible for the actions of the Owner's contractor or any other party contracting with Owner to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of the final plans by the Owner shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents and Engineers for the accuracy or competency of their designs, working drawings and specifications, or other documents and services provided by Engineer hereunder; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the designs, working drawings and specifications, or other documents and services provided by Engineer hereunder; or other documents prepared by Engineer, its employees, and subconsultants.

#### **SECTION 10. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

Engineer agrees that it is an independent contractor and not an agent of the Owner, and that Engineer is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve Owner of any responsibility or liability from treating Engineer's employees as employees of Owner for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. Engineer further agrees to indemnify and hold Owner harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of Engineer.

#### **SECTION 11. INDEMNIFICATION FOR NON-PAYMENT**

To the extent Owner has paid Engineer in full hereunder for same, Engineer shall defend and indemnify Owner against and hold Owner and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by Engineer in performing this Agreement.

#### **SECTION 12. ASSIGNMENT**

Neither party shall assign or sublet this Agreement or any part thereof, without the prior written consent of the other party.

#### **SECTION 13. APPLICABLE LAWS**

Engineer shall comply with all federal, state, county and municipal laws, ordinances, regulations, safety orders, resolutions and building codes applicable to services to be performed under this Agreement.

#### **SECTION 14. DEFAULT OF ENGINEER**

In the event Engineer fails to comply or is unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within fourteen (14) days after written notice by Owner to Engineer, Owner may, at its sole discretion without prejudice to any other right or remedy:

- Terminate this Agreement and be relieved of the payment of any further consideration to Engineer except for all services determined by Owner to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for percentage of completion by Engineer through such date of termination. In the event of, of such termination, Owner may proceed to complete the services in any manner deemed proper by Owner, either by the use of its own forces or by resubletting to others. In either event, the Engineer shall be liable for all reasonable, unmitigatable costs in excess of the total contract price under this Agreement incurred to complete the services herein provided for and the costs so incurred may be due or that may thereafter become due to Engineer under and by virtue of this Agreement.
- Owner may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation. The reasonable expense for same may be offset against amounts due the Engineer. In such case, Engineer shall not be liable with respect to indemnity or otherwise for any such services performed, arranged, or furnished by Owner. Engineer shall not be considered in default of this Agreement for delays in performance caused by acts of the Owner or other circumstances beyond the reasonable control of the Engineer.

**SECTION 15. ADJUSTMENTS IN SERVICES**

No claims for extra services, additional services or change in the services will be made by Engineer without a written agreement with Owner prior to the performance of such services.

**SECTION 16. EXECUTION BECOMES EFFECTIVE**

This Agreement will be effective upon execution by and between Engineer and Owner.

**SECTION 16-A. VENUE LOCATION**

In the event of any dispute or action under this Contract, venue for any and all disputes or actions shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Agreement.

THIS AREA INTENTIONALLY  
LEFT BLANK

**SECTION 17. AGREEMENT AMENDMENTS**

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements, or stipulation bearing upon the meaning or effect of this Agreement, which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

**SECTION 18. WRITTEN NOTICES**

All notices, demands and communications hereunder shall be in writing and may be served or delivered personally upon the party for whom intended, or mailed to the party to whom intended at the address set forth on the signature page of this Agreement. The address of a party may be changed by notice given pursuant to this Section.

**SECTION 19. GENDER AND NUMBER**

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular numbers shall include the plural conversely.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

OWNER:  
TOWN OF ADDISON, TEXAS

ENGINEER:  
HNTB CORPORATION

By  
: \_\_\_\_\_

Ron Whitehead, City Manager  
5300 Beltline Road  
P.O. Box 9010  
Addison, Texas 75001-9010

By  
: \_\_\_\_\_

Benjamin J. Biller P.E.  
Vice President, Central Division  
5910 Plano Parkway, Suite 200  
Plano, Texas 75093

Witness:  
\_\_\_\_\_

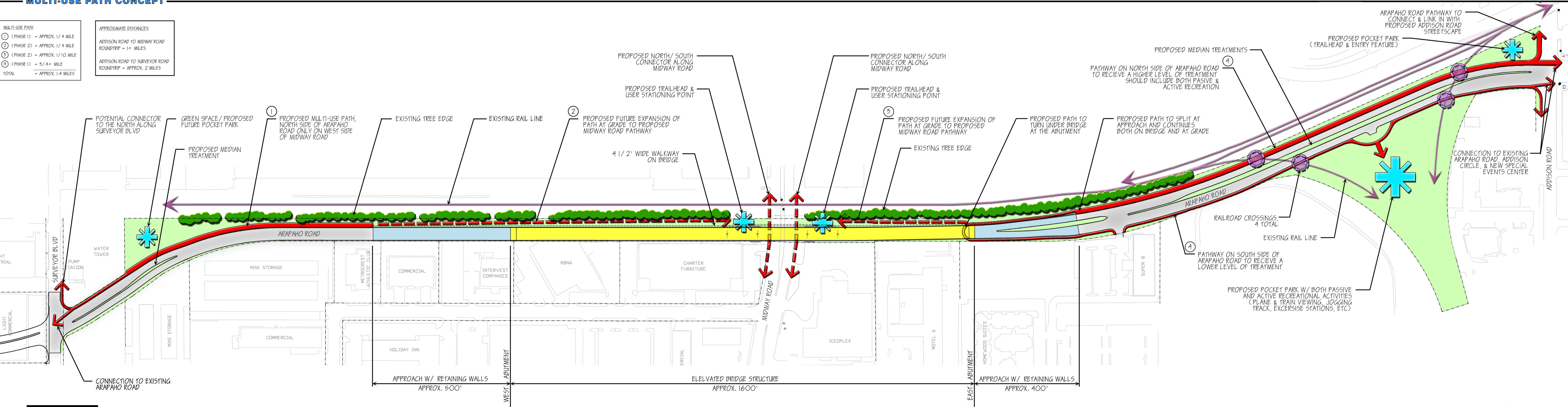
Witness:  
\_\_\_\_\_



MULTI-USE PATH CONCEPT

MULTI-USE PATH	
① (PHASE 1)	= APPROX. 1/4 MILE
② (PHASE 2)	= APPROX. 1/4 MILE
③ (PHASE 2)	= APPROX. 1/10 MILE
④ (PHASE 1)	= 3/4+ MILE
TOTAL	= APPROX. 1.4 MILES

APPROXIMATE DISTANCES	
ADDISON ROAD TO MIDWAY ROAD	ROUNDTRIP = 1+ MILES
ADDISON ROAD TO SURVEYOR ROAD	ROUNDTRIP = APPROX. 2 MILES





Finance Department's  
*Quarterly Review*

*For the Period and Fiscal Year Ended September 30, 2003*

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*Town of Addison  
December 2003*

# *Quarter Ended 9/30/03*

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Addison!

Finance Department

## MEMO

**To: Ron Whitehead, City Manager**

**From: Randy Moravec, Finance Director**

**Re: Fourth Quarter and Year-End  
FY 2003 Financial Report**

**Date: December 2, 2003**

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### CASH AND INVESTMENT REPORT

- Cash for all funds at year-end totaled \$44.1 million, a decline of \$5.8 million from the previous quarter.
- Largest decline was in G.O. Debt Service fund that made annual debt service payments during the quarter. Capital project expenditures contributed to most of the other declines in balance.
- Receipt of bond proceeds brought the Arts & Events district capital project fund to a positive position.
- Investment yields and average weighted maturities:
  - Pooled funds – 1.55% and 291 days.
  - Texpool benchmark – 1.03%
- As noted in the First Southwest report, the Town purchased several securities during the quarter that took advantage of some volatility in interest rates. Agency notes were purchased with yields ranging from 1.8% to 2.55%. It is anticipated there will be more stability during the quarter ending 12/31/03.

## **GENERAL FUND**

- Revenue for the year totaled \$20.5 million, which was 99.9% of budget.
- Sales tax revenue contributed \$9.0 million, which was 0.5% less than received the same period last fiscal year. Addison's decline was between those experienced in Dallas County (down 3.5%) and the State of Texas (down 0.1%).
- Expenditures totaled \$21.0 million, which was 6.1% less than budget.
- All departments were within budget limits.

## **HOTEL FUND**

- Revenues totaled \$4.6 million and were 1.3% over the amended budget.
- For the fourth quarter, total hotel occupancy tax collections were down 9% compared with the final quarter of fiscal year 2002. Tax for the year came in 8% less than the prior year.
- Expenditures for the year totaled \$5.7 million, or 7.2% less than budget.
- Special events exceeded its budget by 8% primarily due to the Taste Addison and Oktoberfest events. Additional expenditures were incurred for Taste to be conducted on a temporary site and Oktoberfest expenditures were impacted by heavy rains prior to the event's opening.

## **AIRPORT FUND**

- Operating revenues for the year came in at \$4.0 million, which were 6.5% less than budget. Revenue from fuel flowage fees and rentals were almost exactly what they had been in 2002.
- Operating expenses totaled \$2.8 million and were 13.2% less than budget.
- Net income for the year was \$1.3 million compared to budget of \$1.0 million. Total working capital increased \$562k.

## **UTILITY FUND**

- For the year, operating revenues brought in \$6.8 million, which was 4.8% less than budget. Income was very comparable to amounts received the previous year.
- Operating expenses totaled \$5.4 million, or 4% less than budget. This amount is also within a percent of expenses in 2002.
- Fund reflects a net income of \$0.5 million and working capital declined \$1.5 million.



# TOWN OF ADDISON

## EXECUTIVE SUMMARY OF MAJOR OPERATING FUNDS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2003 UNAUDITED ACTUAL AMOUNTS COMPARED TO THE 2003 AMENDED BUDGET AND PREVIOUS YEAR ACTUAL FOR SAME PERIOD

All Amounts Expressed in Thousands of Dollars

	General Fund			Hotel Fund			Airport Fund			Utility Fund			Total Major Operating Funds*		
	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual
<b>RESOURCES</b>															
Ad Valorem Tax	\$ 5,864	\$ 5,791	\$ 5,701	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,864	\$ 5,791	\$ 5,701
Non-Property Tax	9,520	9,696	9,723	3,300	3,287	3,551	-	-	-	-	-	-	12,820	12,984	13,284
Franchise Fees	2,507	2,450	2,994	-	-	-	-	-	-	-	-	-	2,507	2,450	2,994
Service/Permitting/License Fees	1,524	1,545	1,499	765	861	766	1,139	1,056	1,098	7,106	6,763	6,716	10,534	10,225	10,079
Rental, Interest and Other Income	1,150	1,065	1,234	508	484	537	3,179	3,009	2,983	300	107	230	5,136	4,665	4,984
Transfers and Other Sources	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Resources</b>	<b>20,565</b>	<b>20,548</b>	<b>21,151</b>	<b>4,573</b>	<b>4,632</b>	<b>4,864</b>	<b>4,318</b>	<b>4,065</b>	<b>4,081</b>	<b>7,406</b>	<b>6,869</b>	<b>6,946</b>	<b>36,861</b>	<b>36,114</b>	<b>37,042</b>
<b>APPLICATION OF RESOURCES</b>															
Personal Services	14,996	13,922	14,235	1,204	1,240	1,104	251	249	288	926	901	839	17,376	16,311	16,466
Supplies and Materials	869	782	892	159	181	130	11	7	6	76	78	78	1,115	1,047	1,106
Maintenance	1,954	1,883	1,793	269	231	257	1,524	1,047	1,200	304	230	197	4,050	3,392	3,447
Contractual Services	3,044	2,906	3,163	3,704	3,248	3,294	1,428	1,488	1,503	4,319	4,171	4,322	12,496	11,813	12,282
Capital Equipment Amortization	1,281	1,279	1,212	24	24	35	-	-	-	11	29	11	1,316	1,333	1,258
Capital Equipment/Projects	234	229	244	30	27	1,153	897	713	252	1,030	945	942	2,191	1,913	2,591
Transfers and Other Uses**	-	-	503	740	740	394	279	-	-	1,955	1,967	1,902	2,974	2,707	2,799
<b>Total Application of Resources</b>	<b>22,377</b>	<b>21,001</b>	<b>22,042</b>	<b>6,130</b>	<b>5,691</b>	<b>6,367</b>	<b>4,390</b>	<b>3,503</b>	<b>3,249</b>	<b>8,622</b>	<b>8,320</b>	<b>8,291</b>	<b>41,518</b>	<b>38,516</b>	<b>39,949</b>
<b>Net Change in Fund Balances</b>	<b>\$ (1,812)</b>	<b>\$ (454)</b>	<b>(891)</b>	<b>\$ (1,557)</b>	<b>\$ (1,059)</b>	<b>\$ (1,503)</b>	<b>\$ (72)</b>	<b>\$ 562</b>	<b>\$ 832</b>	<b>\$ (1,215)</b>	<b>\$ (1,451)</b>	<b>(1,345)</b>	<b>\$ (4,657)</b>	<b>\$ (2,402)</b>	<b>(2,907)</b>

### Notes:

\* Totals may not exactly match due to rounding.

\*\* Transfers and other uses includes interfund transfers and and retirement of debt in the Airport and Utility funds.  
All amounts subject to audit adjustments.



# TOWN OF ADDISON

## GENERAL FUND

### FY 2003 QUARTERLY STATEMENT OF REVENUES COMPARED TO BUDGET

*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Advalorem taxes:						
Current taxes	\$ 5,849,930	\$ (35,452)	\$ 5,740,843	98.1%	\$ 5,668,078	99.1%
Delinquent taxes	4,730	35,589	21,902	463.0%	7,732	110.0%
Penalty & interest	9,450	1,476	27,792	294.1%	25,251	359.2%
Non-property taxes:						
Sales tax	8,820,000	2,289,722	8,971,759	101.7%	9,020,989	98.6%
Alcoholic beverage tax	700,000	369,136	724,520	103.5%	701,552	100.2%
Franchise / right-of-way use fees:						
Electric franchise	1,460,000	1,459,843	1,462,463	100.2%	1,959,221	100.5%
Gas franchise	132,000	-	132,409	100.3%	200,916	100.5%
Telecommunication access fees	800,000	344,149	753,501	94.2%	717,169	75.5%
Cable franchise	110,000	48,725	95,771	87.1%	112,912	102.6%
Street rental fees	5,000	3,500	6,000	120.0%	3,500	70.0%
Licenses and permits:						
Business licenses and permits	136,550	52,648	145,459	106.5%	136,980	101.3%
Building and construction permits	210,500	67,715	241,365	114.7%	204,704	88.8%
Intergovernmental revenue	3,000	-	-	0.0%	126,399	97.6%
Service fees:						
General government	900	288	707	78.6%	821	91.2%
Public safety	776,000	173,976	746,410	96.2%	833,660	110.0%
Urban development	1,100	1,285	4,188	380.7%	2,390	217.3%
Streets and sanitation	186,900	59,561	193,434	103.5%	183,565	98.3%
Recreation	66,000	16,008	68,133	103.2%	65,730	102.7%
Interfund	145,590	36,399	145,596	100.0%	71,380	109.8%
Court fines	770,000	162,412	686,311	89.1%	744,185	96.6%
Interest earnings	225,000	21,469	120,846	53.7%	207,620	70.4%
Rental income	140,000	40,424	141,902	101.4%	144,788	114.9%
Other	12,000	(806)	116,300	969.2%	11,689	194.8%
Total Revenues	<u>\$ 20,564,650</u>	<u>\$ 5,148,067</u>	<u>\$ 20,547,611</u>	99.9%	<u>\$ 21,151,231</u>	98.1%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.



# TOWN OF ADDISON

## GENERAL FUND

### FY 2003 QUARTERLY STATEMENT OF EXPENDITURES COMPARED TO BUDGET

*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
General Government:						
City manager	1,092,290	239,540	1,005,730	92.1%	\$ 1,079,220	92.2%
Finance	908,250	201,048	907,175	99.9%	934,580	97.0%
Building and fleet services	573,230	154,593	558,059	97.4%	591,005	99.9%
Municipal court	383,060	96,460	358,861	93.7%	412,708	93.7%
Human resources	296,440	62,665	296,331	100.0%	285,859	91.3%
Information technology	931,780	204,357	890,838	95.6%	915,825	93.5%
Combined services	696,280	179,092	654,533	94.0%	809,727	102.3%
Council projects	248,840	36,847	241,350	97.0%	206,424	89.2%
Public safety:						
Police	6,755,210	1,588,082	6,189,915	91.6%	6,208,903	96.2%
COPS grant programs	-	-	-	N/A	255,354	109.9%
Fire	5,025,120	1,206,382	4,794,133	95.4%	4,922,704	96.8%
Development services	515,990	122,564	485,809	94.2%	495,527	93.5%
Streets	1,513,100	489,528	1,504,350	99.4%	1,452,862	93.7%
Parks and Recreation:						
Parks	2,039,050	597,477	1,801,320	88.3%	1,936,927	87.6%
Recreation	1,398,310	445,640	1,313,062	93.9%	1,031,677	85.4%
Total Expenditures	22,376,950	5,624,275	21,001,466	93.9%	21,539,302	94.7%
Transfers to other funds	-	-	-	N/A	503,000	86.1%
Total Expenditures and Other Financing Uses	\$ 22,376,950	\$ 5,624,275	\$ 21,001,466	93.9%	\$ 22,042,302	94.5%

**NOTES:**

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.



# TOWN OF ADDISON

## HOTEL FUND

### FY 2003 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET

*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
<b>Revenues:</b>						
Hotel/Motel occupancy taxes	\$ 3,300,000	\$ 812,032	\$ 3,287,389	99.6%	\$ 3,560,558	101.7%
Proceeds from special events	765,000	492,143	860,813	112.5%	765,954	136.0%
Conference centre rental	350,000	70,901	349,189	99.8%	275,115	113.7%
Theatre centre rental	60,000	5,220	53,469	89.1%	63,962	127.9%
Interest and miscellaneous	97,700	4,025	81,393	83.3%	198,065	102.2%
<b>Total Revenues</b>	<b>4,572,700</b>	<b>1,384,321</b>	<b>4,632,253</b>	<b>101.3%</b>	<b>4,863,654</b>	<b>106.9%</b>
<b>Expenditures and other uses:</b>						
Visitor services	1,044,900	199,821	823,874	78.8%	2,030,524	90.0%
Marketing	1,287,120	348,326	1,024,116	79.6%	-	N/A
Special events	1,715,430	980,257	1,862,435	108.6%	1,486,749	83.4%
Conference centre	785,070	183,226	721,459	91.9%	777,722	90.9%
Performing arts	557,450	86,048	518,968	93.1%	693,851	93.3%
Capital projects	-	-	-	0.0%	985,078	152.7%
Other financing uses:						
Transfer to debt service fund	740,000	370,000	740,000	100.0%	393,525	103.6%
<b>Total Expenditures and Other</b>	<b>\$ 6,129,970</b>	<b>\$ 2,167,678</b>	<b>\$ 5,690,852</b>	<b>92.8%</b>	<b>\$ 6,367,449</b>	<b>95.6%</b>

**NOTES:**

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.
- 3) Amounts spent by special project:

Public Relations	\$ 1,097,750	\$ 375,021	\$ 878,957	80.1%	\$ 828,015	72.4%
Oktoberfest	520,670	535,825	560,592	107.7%	312,820	61.2%
Kaboom Town	172,960	130,599	181,226	104.8%	173,712	108.4%
Calendar	41,000	-	42,459	103.6%	48,239	117.7%
Hotel Support Program	300,000	51,065	230,239	76.7%	233,261	62.0%
Taste Addison	457,610	53,352	493,836	107.9%	365,429	82.3%
Spikefest	30,000	-	-	0.0%	41,651	92.6%
Jazz Festival	276,540	-	213,946	77.4%	256,212	122.0%
Weekend to Wipe Out Cancer	13,000	-	-	0.0%	13,059	65.3%
<b>TOTAL</b>	<b>\$ 2,909,530</b>	<b>\$ 1,145,862</b>	<b>\$ 2,601,255</b>	<b>89.4%</b>	<b>\$ 2,272,398</b>	<b>77.0%</b>



**TOWN OF ADDISON**  
**STREET CAPITAL PROJECT FUND**  
**FY 2003 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET**  
*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
<b>Revenues:</b>						
DART Grants	\$ 1,462,880	\$ 20,089	\$ 220,288	15.1%	\$ 59,053	4.3%
Interest income and other	200,000	30,878	130,532	65.3%	205,152	91.2%
Transfer from general fund	-	-	-	0.0%	-	0.0%
Total Revenues	<u>1,662,880</u>	<u>50,967</u>	<u>350,820</u>	<u>21.1%</u>	<u>264,205</u>	<u>16.4%</u>
<b>Expenditures:</b>						
Personal services	200,000	47,634	201,220	100.6%	191,498	100.1%
Arbitrage rebate	-	-	135,364	N/A	-	N/A
Design and engineering	-	3,989	60,294	N/A	74,162	63.4%
Construction and equipment:	4,628,160	514,459	1,505,653	32.5%	132,220	3.9%
Total Expenditures	<u>\$ 4,828,160</u>	<u>\$ 566,082</u>	<u>\$ 1,902,531</u>	<u>39.4%</u>	<u>\$ 397,880</u>	<u>10.7%</u>

**NOTES:**

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.



**TOWN OF ADDISON**  
**2000 CAPITAL PROJECT FUND**  
FY 2003 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET  
*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues and other sources:						
Interest earnings and other	\$ 100,000	\$ 4,950	\$ 33,792	33.8%	\$ 163,417	40.9%
Other sources: transfer from 2002 CP Fund	-	-	1,673,496	N/A	-	0.0%
<b>Total Revenues</b>	<b>100,000</b>	<b>4,950</b>	<b>1,707,288</b>	<b>1707.3%</b>	<b>\$ 163,417</b>	<b>40.9%</b>
Expenditures:						
Design and engineering	766,980	(2,042)	289,178	37.7%	830,407	99.2%
Construction and equipment	2,469,720	104,341	2,427,387	98.3%	6,067,414	110.3%
<b>Total Expenditures</b>	<b>\$ 3,236,700</b>	<b>\$ 102,299</b>	<b>\$ 2,716,565</b>	<b>83.9%</b>	<b>\$ 6,897,821</b>	<b>108.8%</b>

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

**TOWN OF ADDISON**  
**2002 CAPITAL PROJECT FUND**  
FY 2003 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET  
*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Bond proceeds	\$ 15,095,000	\$ -	\$ 15,095,000	100.0%	\$ -	N/A
Interest earnings and other	400,000	34,253	186,901	46.7%	-	N/A
<b>Total Revenues</b>	<b>15,495,000</b>	<b>34,253</b>	<b>15,281,901</b>	<b>98.6%</b>	<b>\$ -</b>	<b>N/A</b>
Expenditures and other uses:						
Personal services	30,510	8,144	26,670	87.4%	-	N/A
Bond sale costs	150,000	-	-	0.0%	-	N/A
Design and engineering	200,000	338,145	676,438	338.2%	-	N/A
Construction and equipment	7,025,000	2,301,770	3,853,413	54.9%	-	N/A
Other uses: transfer to 2000 CP fund	-	-	1,673,496	N/A	-	N/A
<b>Total Expenditures</b>	<b>\$ 7,405,510</b>	<b>\$ 2,648,059</b>	<b>\$ 6,230,017</b>	<b>84.1%</b>	<b>\$ -</b>	<b>N/A</b>

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.



**TOWN OF ADDISON**  
**AIRPORT FUND**  
FY 2003 QUARTERLY STATEMENT OF REVENUES, EXPENDITURES  
AND CHANGES TO WORKING CAPITAL COMPARED TO BUDGET  
*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Operating revenues:						
Operating grants	\$ 35,000	\$ 25,263	\$ 25,263	72.2%	\$ 78,241	0.0%
Fuel flowage fees	1,092,000	316,650	1,040,323	95.3%	1,054,204	105.4%
Rental	3,063,900	923,944	2,879,569	94.0%	2,880,719	99.1%
User fees	47,250	(2,538)	16,126	34.1%	43,088	105.1%
Total operating revenues	4,238,150	1,263,319	3,961,281	93.5%	4,056,252	101.3%
Operating expenses:						
Town - Personal services	250,640	73,791	248,869	99.3%	288,335	91.7%
Town - Supplies	10,700	3,179	6,835	63.9%	6,334	26.1%
Town - Maintenance	11,320	34,634	44,668	394.6%	115,195	62.4%
Town - Contractual services	403,890	155,149	414,297	102.6%	572,876	132.4%
Grant - Maintenance	91,000	-	-	0.0%	-	0.0%
Operator operation & maintenance	1,421,870	388,263	1,002,740	70.5%	1,084,981	95.4%
Operator service contract	1,024,280	253,733	1,073,468	104.8%	929,660	95.3%
Total operating expenses	3,213,700	908,749	2,790,877	86.8%	2,997,381	97.7%
Net operating income	1,024,450	354,570	1,170,404	114.2%	1,058,871	113.1%
Non-Operating revenues (expenses):						
Interest earnings and other	79,800	37,987	103,739	130.0%	24,265	31.9%
Interest on debt, fiscal fees & other	(135,000)	-	-	0.0%	-	N/A
Total non-operating revenues (expenses)	(55,200)	37,987	103,739	-187.9%	24,265	31.9%
Net income (loss) (excluding depreciation)	\$ 969,250	\$ 392,557	\$ 1,274,143	131.5%	\$ 1,083,136	107.0%
<b>CHANGES IN WORKING CAPITAL</b>						
Net income (excluding depreciation)	\$ 969,250	\$ 392,557	\$ 1,274,143	131.5%	1,083,136	86.1%
Sources (uses) of working capital:						
Retirement of long-term debt	(144,340)	-	-	0.0%	-	N/A
Net additions to fixed assets with grants	(397,000)	(150,900)	(160,949)	40.5%	-	0.0%
Other net additions to fixed assets	(500,000)	(37,980)	(551,620)	0.0%	(251,593)	0.0%
Net sources (uses) of working capital	(1,041,340)	(188,880)	(712,569)	68.4%	(251,593)	64.0%
Net increase (decrease) in working capital	(72,090)	203,677	561,574	-779.0%	831,543	134.4%
Beginning fund balance	1,069,600	1,836,252	1,221,354	114.2%	406,081	99.9%
Ending fund balance	\$ 997,510	\$ 2,039,929	\$ 1,782,928	178.7%	\$ 1,237,624	120.7%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.



**TOWN OF ADDISON**  
**UTILITY FUND**  
**FY 2003 QUARTERLY STATEMENT OF REVENUES, EXPENDITURES**  
**AND CHANGES TO WORKING CAPITAL COMPARED TO BUDGET**  
*With Comparative Information from Prior Fiscal Year*

Category	2002-03 FY				2001-02 FY	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
<b>Operating revenues:</b>						
Water sales	\$ 3,359,000	\$ 1,168,274	\$ 3,153,606	93.9%	\$ 3,151,972	83.4%
Sewer charges	3,681,100	1,172,178	3,555,968	96.6%	3,515,626	91.3%
Tap fees	1,000	1,150	1,150	115.0%	400	20.0%
Penalties	65,000	21,243	51,795	79.7%	48,437	86.5%
Total operating revenues	<u>7,106,100</u>	<u>2,362,845</u>	<u>6,762,519</u>	<u>95.2%</u>	<u>6,716,435</u>	<u>87.4%</u>
<b>Operating expenses:</b>						
Water purchases	2,216,600	788,767	2,128,504	96.0%	2,334,989	99.2%
Wastewater treatment	1,661,500	411,789	1,678,811	101.0%	1,597,539	86.5%
Utility operations	1,758,500	450	1,601,461	91.1%	1,515,345	93.9%
Total operating expenses	<u>5,636,600</u>	<u>1,201,006</u>	<u>5,408,776</u>	<u>96.0%</u>	<u>5,447,873</u>	<u>93.7%</u>
Net operating income	<u>1,469,500</u>	<u>1,161,839</u>	<u>1,353,743</u>	<u>92.1%</u>	<u>1,268,562</u>	<u>67.8%</u>
<b>Non-Operating revenues (expenses):</b>						
Interest income and other	300,000	26,349	106,955	35.7%	230,273	41.4%
Interest on bonded debt and fiscal charges	(1,015,620)	(240,550)	(962,210)	94.7%	(1,345,200)	100.0%
Total non-operating revenues (expenses)	<u>(715,620)</u>	<u>(214,201)</u>	<u>(855,255)</u>	<u>119.5%</u>	<u>(1,114,927)</u>	<u>141.4%</u>
Net income (excluding depreciation)	<u>\$ 753,880</u>	<u>\$ 947,638</u>	<u>\$ 498,488</u>	<u>66.1%</u>	<u>\$ 153,635</u>	<u>14.2%</u>
<b>CHANGES IN WORKING CAPITAL</b>						
Net income (loss)	<u>753,880</u>	<u>947,638</u>	<u>498,488</u>	<u>66.1%</u>	<u>153,635</u>	<u>14.2%</u>
<b>Sources (uses) of working capital:</b>						
Retirement of long-term debt	(939,300)	(251,136)	(1,004,540)	106.9%	(556,610)	98.4%
Net additions to fixed assets	(1,030,000)	(420,692)	(945,195)	91.8%	(941,663)	48.7%
Net sources (uses) of working capital	<u>(1,969,300)</u>	<u>(671,828)</u>	<u>(1,949,735)</u>	<u>99.0%</u>	<u>(1,498,273)</u>	<u>60.0%</u>
Net increase (decrease) in working capital	<u>(1,215,420)</u>	<u>275,810</u>	<u>(1,451,247)</u>	<u>119.4%</u>	<u>(1,344,638)</u>	<u>95.1%</u>
<b>Beginning fund balance</b>	<u>5,490,970</u>	<u>3,801,118</u>	<u>5,099,644</u>	<u>92.9%</u>	<u>6,698,742</u>	<u>100.5%</u>
<b>Ending fund balance</b>	<u>\$ 4,275,550</u>	<u>\$ 4,076,928</u>	<u>\$ 3,648,397</u>	<u>85.3%</u>	<u>\$ 5,354,104</u>	<u>101.9%</u>

**NOTES:**

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.
- 3) Purchases of water and wastewater treatment services are underreported by one to two months due to prior year accruals and delay in receiving billings from Dallas Water Utilities.



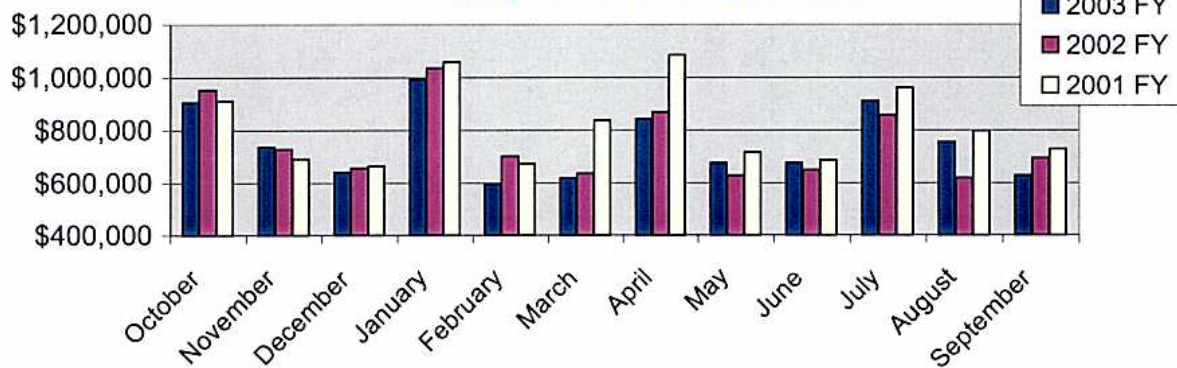
# TOWN OF ADDISON

## Schedule of Sales Tax Collections and Related Analyses

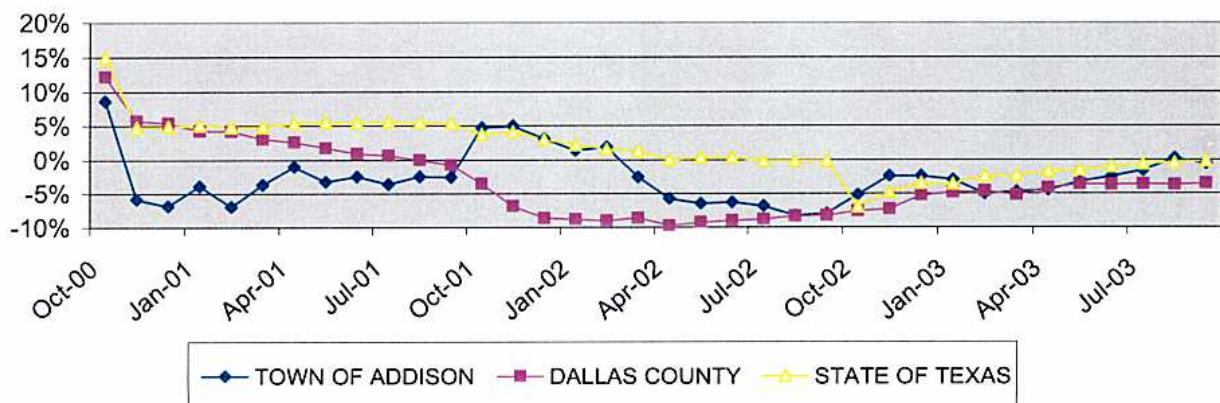
For the fiscal year ending September 30, 2003

	TOWN OF ADDISON					DALLAS COUNTY		STATE OF TEXAS		
				% Change from		% Change from		% Change from		
	2002-03 Collections			Prior Year		Prior Year		Prior Year		
	Monthly	Cumulative	Monthly	Cumulative		Monthly	Cumulative	Monthly	Cumulative	
October	\$	903,404	\$	903,404	-5.2%	-5.2%	-7.6%	-7.6%	-6.9%	-6.9%
November	\$	738,070	\$	1,641,474	1.4%	-2.3%	-6.9%	-7.3%	-1.9%	-4.8%
December	\$	640,506	\$	2,281,980	-2.4%	-2.4%	0.1%	-5.3%	-0.1%	-3.4%
January	\$	991,737	\$	3,273,718	-4.1%	-2.9%	-3.9%	-4.8%	-3.5%	-3.5%
February	\$	595,675	\$	3,869,393	-15.1%	-5.0%	-3.4%	-4.6%	3.7%	-2.3%
March	\$	617,765	\$	4,487,158	-2.7%	-4.7%	-8.9%	-5.2%	-1.9%	-2.3%
April	\$	841,659	\$	5,328,817	-3.1%	-4.4%	1.0%	-4.2%	0.8%	-1.8%
May	\$	675,783	\$	6,004,600	7.8%	-3.2%	1.2%	-3.6%	1.1%	-1.5%
June	\$	677,437	\$	6,682,037	4.1%	-2.5%	-4.5%	-3.7%	2.8%	-1.0%
July	\$	908,407	\$	7,590,444	6.2%	-1.5%	-3.0%	-3.6%	2.3%	-0.6%
August	\$	752,756	\$	8,343,200	21.8%	0.2%	-5.1%	-3.7%	2.5%	-0.4%
September	\$	628,559	\$	8,971,759	-9.4%	-0.5%	-0.1%	-3.5%	2.9%	-0.1%
Budget 02-03:		\$	8,820,000							
Actual Year-End		\$	8,971,759							

Monthly Sales Tax Collections



Cumulative Change from Prior Year



**TOWN OF ADDISON HOTEL OCCUPANCY TAX COLLECTION**  
**Hotels By Service Type for the Quarter and Year Ended September 30, 2003**  
**With Comparisons to Prior Year**

	Rooms		4th Quarter FY 03		03 to 02 % Diff.	YTD FY 03		03 to 02 % Diff.
	Number	Percentage	Amount	Percentage		Amount	Percentage	
Full Service								
Marriott Quorum	548	14%	\$ 207,842	26%	-11%	\$ 760,070	23%	-7%
Intercontinental	529	13%	143,704	18%	-1%	620,250	19%	-14%
Crown Plaza	429	11%	63,150	8%	-27%	336,161	10%	-6%
	1,506	38%	414,696	51%	-11%	1,716,481	52%	-9%
Extended Stay								
Budget Suites	344	9%	6,307	1%	-5%	29,130	1%	-11%
Best Western*	70	2%	1,014	0%	-84%	1,014	0%	-96%
Marriott Residence	150	4%	36,166	4%	-14%	124,402	4%	-17%
Summerfield Suites	132	3%	38,635	5%	21%	128,770	4%	-7%
Homewood Suites	128	3%	31,731	4%	7%	120,904	4%	0%
Springhill Suites **	159	4%	23,304	3%	7%	65,771	2%	N/A
	983	24%	137,156	17%	17%	469,991	14%	0%
Business Moderate								
Marriott Courtyard Quorum	176	4%	50,564	6%	-31%	217,181	7%	-10%
LaQuinta Inn	152	4%	27,174	3%	-8%	100,753	3%	-15%
Marriott Courtyard Proton	147	4%	25,670	3%	-31%	125,337	4%	-10%
Country Inn	102	3%	20,515	3%	5%	86,964	3%	2%
Hilton Garden Inn	96	2%	31,490	4%	-4%	129,995	4%	5%
Wingate Inn	101	3%	14,794	2%	-4%	69,239	2%	1%
Comfort Inn	86	2%	7,979	1%	187%	34,660	1%	-6%
	860	21%	178,185	22%	-18%	764,129	23%	-7%
Economy								
Motel 6	168	4%	17,240	2%	-12%	68,757	2%	-4%
Hampton Inn	160	4%	28,217	3%	-2%	112,401	3%	-7%
Holiday Inn	118	3%	20,881	3%	-8%	82,773	3%	-14%
Quality Inn	78	2%	11,053	1%	-36%	57,881	2%	3%
Ramada Inn Ltd.	78	2%	1,584	0%	-19%	6,725	0%	-45%
Sleep Inn	63	2%	3,020	0%	26%	8,252	0%	-40%
	665	17%	81,994	10%	-11%	336,788	10%	-9%
TOTAL	4,014	100%	\$ 812,032	100%	-9%	\$ 3,287,389	100%	-8%

\* Reopened (formerly Mainstay Suites)

\*\* Opened January, 2003



**TOWN OF ADDISON**  
**INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS**  
For the Quarter Ending September 30, 2003

<b>Fund</b>	<b>Balance 6/30/2003</b>	<b>Quarter Receipts</b>	<b>Quarter Disbursements</b>	<b>Balance 9/30/2003</b>
<b>General Fund</b>	\$ 8,309,698	\$ 5,710,392	\$ 6,924,492	\$ 7,095,598
<b>Special Revenue Funds:</b>				
Hotel	5,842,012	2,930,123	3,806,154	4,965,981
Police Forfeiture	100,928	38,893	101,371	38,450
Municipal Court	-	196,582	33,967	162,615
Arbor	51,608	7,286	1,723	57,171
<b>Debt Service Funds:</b>				
G. O. Bonds	6,844,525	348,363	5,144,453	2,048,435
Hotel Revenue Bonds	265,171	480,901	79,587	666,485
G. O. Bonds 2001	1,930	32,213	-	34,143
<b>Capital Projects Funds:</b>				
Streets	7,291,531	41,670	1,540,234	5,792,967
Parks	-	-	-	-
2000 G. O. Bonds	749,935	332,754	636,094	446,595
2002 G.O. Bonds	11,716,162	1,112,308	2,790,461	10,038,009
Arts & Events District	(2,885,135)	8,005,163	3,429,087	1,690,941
<b>Enterprise Fund:</b>				
Utility Fund	5,441,053	2,329,418	2,842,239	4,928,232
Airport	1,500,133	1,014,003	1,014,922	1,499,214
<b>Internal Service Funds:</b>				
Capital Replacement	3,677,322	194,522	137,086	3,734,758
Information Services	989,795	155,822	199,616	946,001
<b>TOTAL - ALL FUNDS</b>	<b>\$ 49,896,668</b>	<b>\$ 22,930,413</b>	<b>\$ 28,681,486</b>	<b>\$ 44,145,595</b>

Note: Cash inflows and outflows represent revenues, expenditures, and investment transactions.

**INVESTMENTS BY MATURITY AND TYPE**

As of September 30, 2003

	<b>Type</b>	<b>% of Portfolio</b>	<b>Yield to Maturity</b>	<b>Amount</b>
	Pools	9.07%	1.03%	\$ 4,293,508
	Commercial Paper	16.89%	1.30%	7,995,382
	Agencies	74.04%	1.67%	35,056,203
<b>Total Investments</b>		<b>100.00%</b>		<b>47,345,093</b>
Accrued Interest Earnings				314,855
Demand Deposits				(3,514,353)
<b>TOTAL</b>				<b>\$ 44,145,595</b>

## COLLATERAL SUMMARY

The first and most important objective for public funds investments is safety of assets. Therefore, all non-government security investments and bank accounts in excess of FDIC coverage must be secured by collateral. The bank balances and investments are monitored on a daily basis for appropriate coverage by marking the collateral to market using the previous day's *WALLSTREET JOURNAL*. Month-end reports prepared by the pledging institution are compared to internal reports for accuracy. Collateral levels are adjusted to secure the varying levels of receipts throughout the fiscal year.

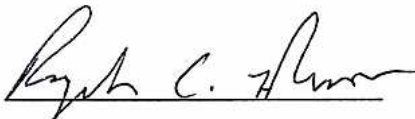
Town of Addison Collateral Analysis Demand Deposit Cash September 30, 2003							
<u>Pledging Institution</u>	<u>Safekeeping Location</u>	<u>Account Title</u>	<u>Pledged Security Description</u>	<u>Security Par Value</u>	<u>Market Value</u>	<u>FDIC Insurance</u>	<u>Ending Bank Balance</u>
Bank of America	Federal Reserve	Operating	T-Bond due:				
			15-Nov-21	\$ 929,000	\$ 1,316,569		
				<u>\$ 929,000</u>	<u>\$ 1,316,569</u>	<u>\$ 100,000</u>	<u>\$ 969,491</u>
							<u>\$ 447,078</u>



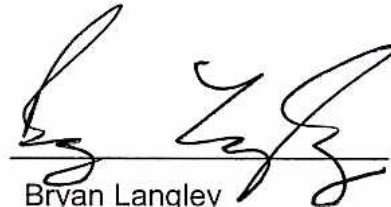
**Quarterly Investment Report  
Pooled Investment Funds  
Quarter ending September 30, 2003**

This quarterly Investment report has been prepared in compliance with Section 2256.023 "Internal Management Reports", of the Public Funds Investment Act, and in accordance with reporting requirements contained in the Town of Addison Investment Policy as approved by City Council on January 14, 2003.

Activity in the Town's portfolio during this quarter is in compliance with the investment strategy as specified in the Town's Investment Policy. All investments are high-quality securities with no perceived default risk. Securities reflect active and efficient secondary markets in the event of an unanticipated cash requirement. Operating funds require the greatest short-term liquidity. Investment pools have been utilized to provide short-term fund requirements. Investment maturities have been staggered throughout the budget cycle to provide cash flow based on anticipated operating needs of the Town. Diversifying the appropriate maturity structure has reduced market cycle risk. There has been no loss of principal during this quarter of activity, and none is anticipated in the future.



Randolph C. Moravec  
Director of Finance



Bryan Langley  
Asst. Director of Finance



**Investment Portfolio Summary**

**For the Quarter Ended**

**September 30, 2003**

**Prepared by**



**FIRST SOUTHWEST ASSET MANAGEMENT, INC.**

### **Third Quarter of Calendar Year 2003 Review**

It was a classic example of the financial markets getting ahead of themselves as a brief surge in the economy created the impression that the Fed would step up their tightening schedule. No doubt, the third quarter was surprisingly strong with projected GDP in the 4.5% range. There was no impending war, no earth-shaking corporate scandals and no major terror attacks to temper investor sentiment. The equity markets enjoyed fine quarters as corporate profits generally exceeded expectations. Business spending, which many considered essential to economic rebound, finally picked up. The housing market went through the rafters, new car sales boomed and declining initial unemployment claims hinted that job growth was on the way. Surely, investors rationalized, deflation couldn't be a problem if demand was rapidly accelerating. The Fed bypassed opportunities to ease overnight rates in August and September and inadvertently conveyed the message that a rate hike was right around the corner. Fed officials then spent much of September trying to convince investors otherwise. Mortgage cash-out refinancing and Federal tax refunds fueled consumer spending for much of July, a spark of optimism ignited August before reality, in the form of continued unemployment grounded September. Yields skyrocketed in July and August before embarking on a month long September slide.

#### **Key Economic Indicators:**

- On the first day of July, the June purchasing managers index was expected to hit 51.0, but instead fell short at 49.8, thereby signaling contraction for the fourth straight month.
- On July 3<sup>rd</sup>, the June employment report was released. Few had predicted that it would show such severe weakness. The unemployment rate unexpectedly rose to 6.4%, the highest since April 1994, as another 30k jobs slipped off the nation's payrolls. Manufacturing continued to be hardest hit as factory payrolls shrunk for the 35<sup>th</sup> consecutive month.
- June retail sales were reported slightly higher than expected, rising 0.5%. When auto sales were excluded, sales rose a solid 0.7%.
- On July 15<sup>th</sup>, Fed Chairman Greenspan testified before the House Financial Services Committee. In his prepared speech, Greenspan made several references to improved economic conditions but reiterated that "the FOMC stands prepared to maintain an accommodative stance of policy for as long as needed." But the statement that the market really keyed on was Greenspan's apparent dismissal of non-traditional policy action, which signaled to traders that the Fed would not, as had been suspected, purchase long term Treasuries in efforts to drive down yields. This prompted the biggest one day bond market sell-off since 1996.
- Durable goods orders jumped 2.1% in June, almost doubling predictions for a 1.1% increase.
- On August 1<sup>st</sup>, the market witnessed the release of the July employment report and the July ISM survey. Both were disappointments. Non-farm payrolls shed another 44k jobs in July, while a June revision saw another 42k jobs lost. The unemployment rate managed to fall from 6.4% to 6.2%, but this was quickly attributed to a shrinking labor force.
- The ISM manufacturing index finally climbed above 50 for the first time since February, but the 51.8 reading fell short of more optimistic expectations.
- Retail sales revealed another positive surprise as July sales surged by 1.4%, the largest increase since March and well above analyst's expectations for a 1.0% increase.
- Second quarter GDP growth was revised from an annual rate of 2.4% to a vigorous 3.1%. Personal consumption expenditures, Greenspan's favorite inflation measure, was revised downward from a 0.9% annual rate to a quite disinflationary 0.7% annual rate.
- The final month of the quarter began with the most optimistic purchasing manager's report all year. Overall manufacturing activity continued to expand as the August ISM factory index rose by



2.9 points to 54.7, exceeding analyst predictions and reaching the highest level since last December. The following day, the two-year T-note closed at 2.04%, the highest point during all of 2003, while one-year agencies topped 1.40%.

- On September 5<sup>th</sup>, a dreadful employment report shocked the financial markets and put an abrupt end to rising yields. August non-farm payrolls, expected to rise by 20k, actually fell by a huge 93k. Prior month downward revisions resulted in the seventh consecutive month of job losses. Factories shed another 44k jobs, the 37<sup>th</sup> straight month of manufacturing layoffs, while the usually resilient service sector reduced payrolls by 64k. This report was particularly revealing in that it seemed to drive home the notion that an essentially jobless recovery probably wasn't sustainable.
- The remaining data releases in September were on the weak side, with the exception of anything related to the housing market.

#### Fed Monetary Policy:

- The Federal Reserve's policy setting Federal Open Market Committee met twice during the quarter. On August 12<sup>th</sup>, the FOMC met with virtually no perceived possibility of cutting rates. The big question centered more on what Fed officials would *say*. As expected, the Fed left the overnight rate unchanged at 1.0%, and trotted out all the old standby language in hopes of calming the runaway markets. In its official statement, the FOMC said that the risks to sustainable economic growth for the next several quarters were roughly equal, but again cited deflation as the predominant concern and said that the current accommodative policy could be maintained *for a considerable period*.
- The Fed met on September 16<sup>th</sup>, and few expected anything new to emerge from the sixth FOMC meeting of 2003. *Nothing did*. The Fed left the funds rate unchanged at 1.00% and delivered the message yet again that upside and downside risks were equal, disinflation was still the predominant concern and policy accommodation could be maintained for a *considerable period*.
- Various speeches by Fed officials during July and August inadvertently conveyed the message that a rate hike was right around the corner. Combined with some decent economic figures this put a great deal of upward pressure on interest rates in July and August. Fed officials then spent much of September trying to convince investors that a rate hike was not imminent. These comments and weaker September data pushed rates down in the last month of the quarter.

#### Market movement:

- The six-month Treasury bill yield rose 4 bps during the quarter from 0.97% to 1.01%, while the one-year T-note rose 6 basis points from 1.09% to 1.15%. The two-year Treasury note yield climbed by 16 bps, but saw a wide range during the quarter hitting a high of 2.04% and a low of 1.27%.
- Stocks posted another good quarter as the DOW rose 290 points, a 3.2% increase, to close the quarter at 9275. The NASDAQ rose 164 points to close the quarter at 1787, up 10%. The S&P 500 advanced 21 points, a gain of 2.15%.
- The TexPool average rate during the third quarter was 1.04%, down about 19 basis points from the second quarter's 1.23%. With the Fed on hold and the fed funds rate stuck at 1%, TexPool's rate has stabilized around this level.

#### U.S. Treasury Yields

		Fed Funds	3 mo. Bill	6 mo. Bill	1 yr. Note	2 yr. Note	3 yr. Note
Last	6/30/03	1.00%	0.85%	0.97%	1.09%	1.30%	1.60%
High			0.99%	1.00%	1.39%	2.04%	2.60%

<b>Low</b>			0.85%	0.93%	1.06%	1.27%	1.58%
<b>End</b>	9/30/03	1.00%	0.94%	1.01%	1.15%	1.46%	1.87%

#### **Portfolio Activity since June 30<sup>th</sup> :**

- There were two maturities during the second quarter. The first in late July for \$2 million par and the second in mid-August for \$3 million par.
- There were three purchases made during the quarter for a total of \$9 million par. At the end of July we purchased \$3 million par of a FHLMC 1.50% note maturing in August 2005. The yield was 1.88% and this purchase was made to take advantage of rising yields and a substantial yield pick up versus TexPool.
- Another purchase made in late-July, which did not settle until mid-August, was a callable security. We purchased \$3 million par of a FHLB 2.55% note maturing in August 2006 and callable quarterly beginning February 2004. This bond offered a substantial pick up in yield versus TexPool and comparable non-callable bonds. Although it may well be called away in February, the yield premium compensates very well for that possibility.
- One final purchase was made in mid-September. \$3 million par of a FNMA 2.00% note, callable quarterly beginning November 2003 and maturing August 2005. Purchased at a slight discount, the yield to call was 2.49% and the yield to maturity was 2.05%. As in the previous purchase, the yield advantage versus TexPool to the call date, and versus comparable non-callable bonds to maturity, was well worth the slight risk of the call option.

#### **Outlook for the Fourth Quarter 2003:**

The US economy will enter the fourth quarter of 2003 with the hard fought third quarter momentum fading fast. It is hard to imagine a scenario in which inflation suddenly accelerates, excess capacity evaporates, business spending explodes and U.S. employers start hiring by the millions. And that's exactly what needs to happen before the Fed reverses course and begins to raise interest rates. Judging strictly by the comments of Fed officials, it could be well into the third quarter of next year before the initial tightening begins. If the labor hemorrhaging continues and disinflation asserts itself, Fed officials have even threatened to cut further. As far fetched as that sounds, there is a far better chance of a rate cut in the next several months than a rate hike.

#### **Projected Strategy for the Fourth Quarter 2003:**

As has been the case for several months now, near term rate hikes are highly unlikely, and rate cuts, though not ruled out, are unlikely as well. We would expect this to result in fairly stable markets with short-term yields stuck in a fairly narrow range. This has not been the case in the third quarter as the market has seen significant moves. Anticipation of eventual rate hikes has added some slope to the short end of the yield curve, providing at least some opportunities to enhance yields. We will continue to take advantage of buying opportunities during market backups and will want to maintain a fairly well diversified portfolio in order to hedge against market swings and the slight possibility of rate cuts. Investment purchases will have to be evaluated individually, taking into account current conditions and market sentiment at the time.



**Town of Addison**  
**Investment Portfolio Summary**  
**For the Quarter Ended September 30, 2003**

	Pooled Funds		
	Par Value	Market Value	Book Value
<b>Investments at June 30, 2003</b>	<b>\$49,739,951</b>	<b>\$49,880,187</b>	<b>\$49,801,702</b>
Investment Purchases	\$13,573,157		
Investment Maturities	(\$16,019,600)		
Investment Sales			
<b>Investments at September 30, 2003</b>	<b>\$47,293,508</b>	<b>\$47,413,250</b>	<b>\$47,345,093</b>
			<b>100.14%</b>

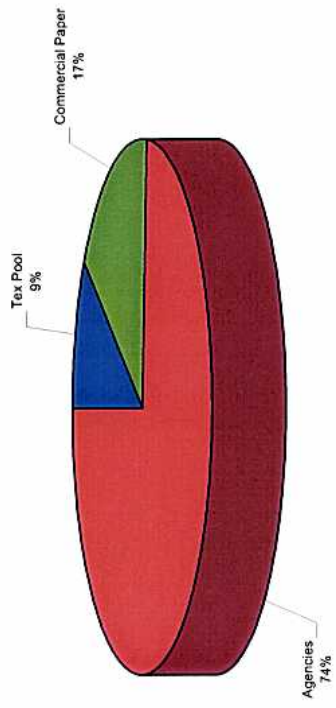
**Town of Addison  
Investments by Maturity and Type  
September 30, 2003**

	<b>Maturity</b>	<b>% of Portfolio</b>	<b>Yield to Maturity</b>	<b>Amount</b>
<b>Investments</b>	0-30 Days	31.23%	1.26%	\$14,787,256
	Over 31 Days	68.77%	1.68%	\$32,557,836
	Total Portfolio	<u>100.00%</u>	<u>1.55%</u>	<u>\$47,345,092</u>

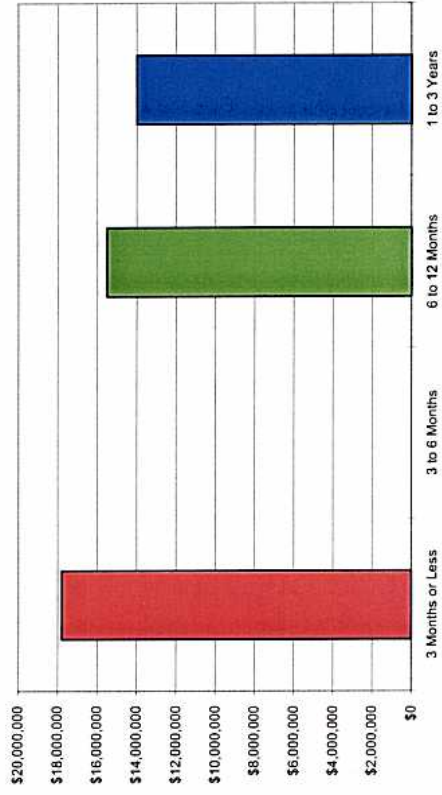
	<b>Type</b>	<b>% of Portfolio</b>	<b>Yield to Maturity</b>	<b>Amount</b>
<b>Investments</b>	Pools	9.07%	1.03%	\$4,293,508
	Commercial Paper	16.89%	1.30%	\$7,995,382
	Agencies	74.04%	1.67%	\$35,056,203
	Total Portfolio	<u>100.00%</u>	<u>1.55%</u>	<u>\$47,345,092</u>

# Town of Addison Pooled Funds September 30, 2003

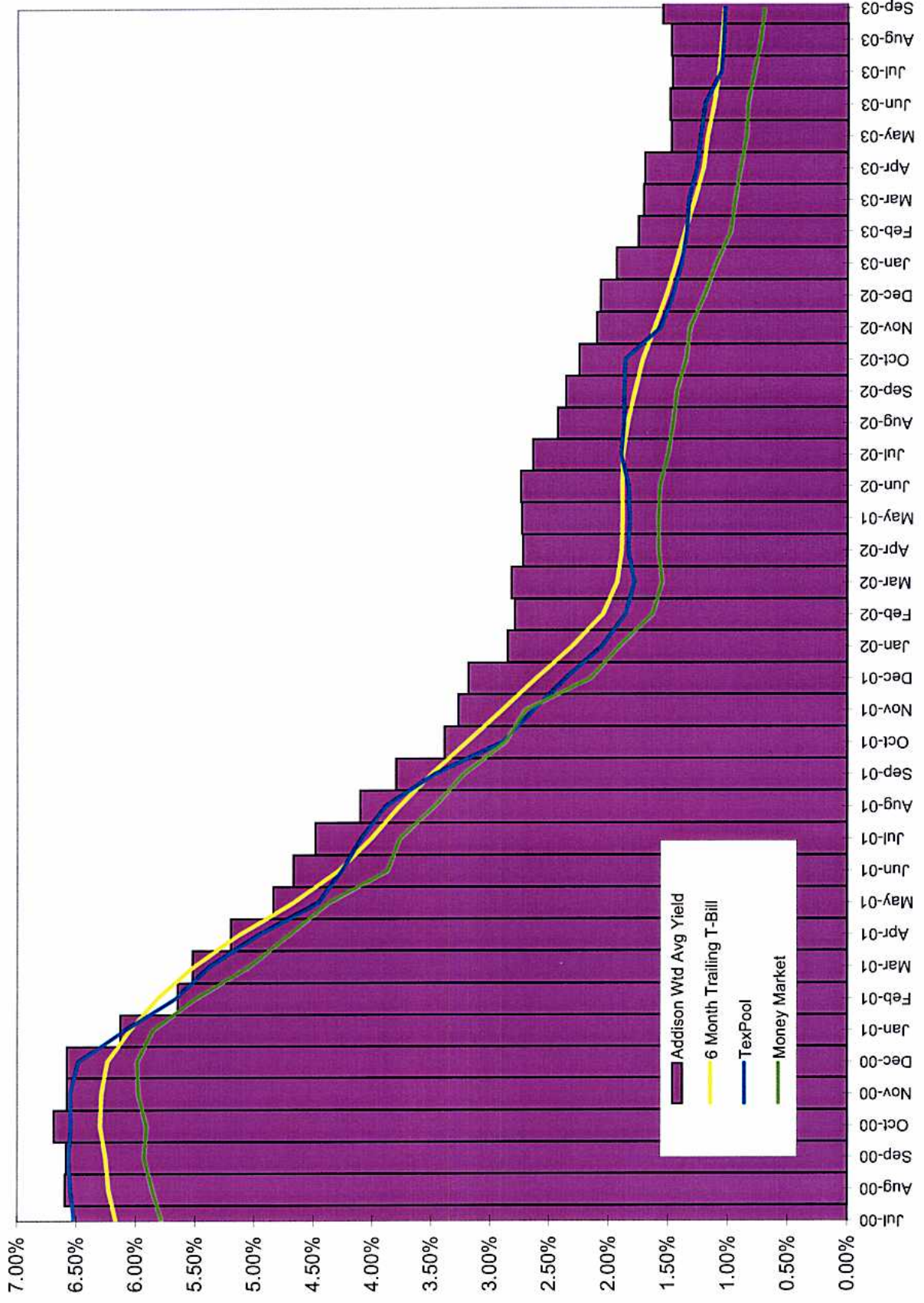
Holdings by Security Type  
Weighted Average Maturity - 291 Days



Maturity Schedule



# Town of Addison - Pooled Funds Yield Analysis



**TOWN OF ADDISON  
PERFORMANCE SUMMARY  
FOR THE PERIOD ENDING SEPTEMBER 30, 2003**

	<b>% of Portfolio</b>	<b>Weighted Avg. Yield to Maturity</b>	<b>Weighted Avg. Days to Maturity</b>	
<b>Tex Pool</b>	9.06%	1.03%		<b>1</b>
<b>Commercial Paper</b>	16.86%	1.30%		<b>17</b>
<b>Agencies</b>	74.08%	1.67%		<b>389</b>
<b>Treasuries</b>				
<b>Total Portfolio</b>	<b>100.00%</b>	<b>1.55%</b>		<b>291</b>
<b>Total Fixed Income Non Money Market (includes CP, Agencies, Treasuries)</b>	<b>90.94%</b>	<b>1.60%</b>		<b>320</b>

**YIELD BENCHMARKS**

	<b>12 Month Trailing</b>	<b>6 Month Trailing</b>	<b>Current Month</b>
<b>Fed Funds</b>	1.23%	1.15%	1.01%
<b>Overnight Repo</b>	1.21%	1.10%	0.97%
<b>Texpool Average</b>	1.31%	1.14%	1.03%
<b>3 Month T-Bill</b>	1.13%	0.99%	0.95%
<b>6 Month T-Bill</b>	1.16%	1.04%	1.02%
<b>1 Year CMT *</b>	1.30%	1.19%	1.27%
<b>2 Year T-Note</b>	1.64%	1.53%	1.68%
<b>5 Year T-Note</b>	2.86%	2.81%	3.16%

\*The 1 Year T-Bill is no longer issued, replaced with 1 Year Constant Maturity Treasury (CMT).

Unless otherwise noted, all instruments are held to maturity.



**TOWN OF ADDISON**  
**AIMR PERFORMANCE SUMMARY**  
**FOR THE PERIOD ENDING SEPTEMBER 30, 2003**

**AIMR PERFORMANCE (Unaudited)**

	Monthly	Annualized
September 2002	0.21%	2.68%
October 2002	0.14%	2.42%
November 2002	0.15%	2.44%
December 2002	0.22%	2.48%
January 2003	0.11%	2.36%
February 2003	0.12%	2.26%
March 2003	0.15%	2.46%
April 2003	0.15%	2.27%
May 2003	0.21%	2.18%
June 2003	0.14%	2.08%
July 2003	0.15%	1.96%
August 2003	0.04%	1.80%
September 2003	0.28%	1.88%

**Cumulative Performance**

	Total Portfolio Addison - Operating Fund	Vanguard Money Market Reserves - US Treasury Fund	Salomon Smith Barney 1-3 yr. Tres Index
Last 3 Months	0.47%	0.19%	0.42%
Last 6 Months	0.97%	0.40%	1.21%
Last 12 Months	1.88%	0.97%	2.85%

The Salomon 1-3 year government index is composed of treasuries and agencies with maturities between 1 and 3 years.

NOTE 1: AIMR calculations consider market value fluctuations as well as interest earned in determining performance

NOTE 2: Fixed income performance includes commercial paper, discount securities and repurchase agreements as well as US Treasury items.

**Town of Addison**  
**DETAIL OF SECURITY HOLDINGS**  
**As of September 30, 2003**

Security Description	Security CUSIP	Coupon	Settlement Date	Maturity Date	Par Value	Purchase Price	Purchase Cost	Book Value	Market Price	Accrued Interest	Market Value	Days to Maturity	Yield to Maturity
<b>Pooled Funds</b>													
GENERAL ELECTRIC CAP CORP CP	36959jx65	0.000	01-27-03	10-06-03	3,000,000	99.111	2,973,330.00	2,999,470.83	99.982	0.00	2,999,460.00	6	1.30
FEDERAL NATL MTG ASSN DISC NT	313588nb7	0.000	11-06-02	10-17-03	2,500,000	98.591	2,464,781.25	2,498,366.67	99.950	0.00	2,498,749.92	17	1.51
GENERAL ELECTRIC CAP SVCS CP	36959sxq1	0.000	01-29-03	10-24-03	5,000,000	99.047	4,952,355.56	4,995,911.11	99.928	0.00	4,996,400.00	24	1.30
FEDL HOME LLN MTG CORP DISC NT	313396qb2	0.000	12-05-02	12-04-03	3,000,000	98.463	2,953,893.33	2,991,893.33	99.820	0.00	2,994,600.22	65	1.56
FEDERAL HOME LN MTG CORP	3134a4ph1	3.750	05-01-03	04-15-04	4,000,000	102.379	4,095,160.00	4,053,561.49	101.406	69,166.67	4,056,250.00	198	1.24
FEDERAL NATL MTG ASSN DISC NT	313588wf8	0.000	05-15-03	04-30-04	6,000,000	98.859	5,931,555.00	5,958,660.00	99.350	0.00	5,961,000.37	213	1.20
FEDERAL HOME LN BKS	3133mnp4	3.375	11-06-02	05-14-04	2,500,000	102.283	2,557,075.00	2,523,262.64	101.344	31,875.00	2,533,593.75	227	1.85
FEDERAL HOME LN MTG CORP	3134a4px6	3.000	03-18-03	07-15-04	3,000,000	102.066	3,061,970.97	3,036,801.77	101.406	19,000.00	3,042,187.50	289	1.42
FEDERAL HOME LN MTG CORP	3134a4rv8	1.875	06-30-03	01-15-05	3,000,000	100.846	3,025,380.00	3,021,193.20	100.687	11,875.00	3,020,625.00	473	1.32
FEDERAL HOME LN MTG CORP MTN	3128x0ct4	2.600	10-29-02	04-29-05	2,000,000	99.616	1,992,320.00	1,995,156.34	100.094	21,955.56	2,001,875.00	577	2.76
FEDERAL HOME LN MTG CORP	3134a4bx2	1.500	07-31-03	08-15-05	3,000,000	99.242	2,977,260.00	2,979,148.00	99.969	9,250.00	2,999,062.50	685	1.88
FEDERAL NATL MTG ASSN	31359msu8	2.000	09-18-03	08-26-05	3,000,000	99.937	2,998,125.00	2,998,159.36	100.125	5,833.33	3,003,750.00	696	2.03
FEDERAL HOME LN BKS	3133x07j2	2.570	08-18-03	08-18-06	3,000,000	100.000	3,000,000.00	3,000,000.00	100.406	9,209.17	3,012,187.50	1,053	2.57
TEXPOOL - 1111	texpool	1.031					4,293,507.75	4,293,507.75			4,293,507.75		1.03
					43,000,000		47,276,713.86	47,345,092.50		178,164.72	47,413,249.51		1.55
<b>TOTAL PORTFOLIO</b>					<b>43,000,000</b>		<b>47,276,713.86</b>	<b>47,345,092.50</b>		<b>178,164.72</b>	<b>47,413,249.51</b>		<b>1.55</b>

**Town of Addison**  
YIELD SUMMARY  
September 30, 2003

Security Description	Security CUSIP	Settlement Date	Maturity Date	Par Value	Market Value	Percent of Assets	Days to Maturity	Weighted Average Maturity	Yield to Maturity
<b>Agency Securities</b>									
FEDERAL NATL MTG ASSN DISC NT	313588nb7	11-06-02	10-17-03	2,500,000	2,498,749.92	5.27	17	1	1.51
FEDL HOME LLN MTG CORP DISC NT	313396qb2	12-05-02	12-04-03	3,000,000	2,994,600.22	6.32	65	4	1.56
FEDERAL HOME LN MTG CORP	3134a4ph1	05-01-03	04-15-04	4,000,000	4,056,250.00	8.56	198	17	1.24
FEDERAL NATL MTG ASSN DISC NT	313588wf8	05-15-03	04-30-04	6,000,000	5,961,000.37	12.57	213	27	1.20
FEDERAL HOME LN BKS	3133mmps4	11-06-02	05-14-04	2,500,000	2,533,593.75	5.34	227	12	1.85
FEDERAL HOME LN MTG CORP	3134a4px6	03-18-03	07-15-04	3,000,000	3,042,187.50	6.42	289	19	1.42
FEDERAL HOME LN MTG CORP	3134a4rv8	06-30-03	01-15-05	3,000,000	3,020,625.00	6.37	473	30	1.32
FEDERAL HOME LN MTG CORP MTN	3128x0ct4	10-29-02	04-29-05	2,000,000	2,001,875.00	4.22	577	24	2.76
FEDERAL HOME LN MTG CORP	3134a4tx2	07-31-03	08-15-05	3,000,000	2,999,062.50	6.33	685	43	1.88
FEDERAL NATL MTG ASSN	31359msu8	09-18-03	08-26-05	3,000,000	3,003,750.00	6.34	696	44	2.03
FEDERAL HOME LN BKS	3133x07j2	08-18-03	08-18-06	3,000,000	3,012,187.50	6.35	1,053	67	2.57
				35,000,000	35,123,881.76	74.08		288	1.67
<b>Commercial Paper</b>									
GENERAL ELECTRIC CAP CORP CP	36959jx65	01-27-03	10-06-03	3,000,000	2,999,460.00	6.33	6	0	1.30
GENERAL ELECTRIC CAP SVCS CP	36959sxq1	01-29-03	10-24-03	5,000,000	4,996,400.00	10.54	24	3	1.30
				8,000,000	7,995,860.00	16.86		3	1.30
<b>Money Markets &amp; Pools</b>									
TEXPOOL - 1111	texpool				4,293,507.75	9.06			1.03
<b>TOTAL PORTFOLIO</b>				<b>43,000,000</b>	<b>47,413,249.51</b>	<b>100.00</b>		<b>291</b>	<b>1.55</b>

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**MEMORANDUM**

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**TO:** Carmen Moran  
**FROM:** John Hill  
**RE:** Joint Public Hearing  
**DATE:** December 4, 2003

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A joint public hearing of the City Council and the Planning and Zoning Commission is scheduled for December 11, 2003. Section 211.007(b) of the Texas Local Government Code provides that the governing body of a municipality may not hold a public hearing regarding a zoning matter until it receives the final report of the zoning commission of the municipality, unless the governing body by ordinance provides for a public hearing to be held, after notice in accordance with law, jointly with a public hearing required to be held by the zoning commission. Attached is an ordinance providing for a joint public hearing to be held on December 11, 2003 to consider the item submitted by CityHomes.

Please let me know if you have any questions or comments.

cc: Ken Dippel  
Angela Washington

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS PROVIDING FOR THE HOLDING OF A PUBLIC HEARING ON A ZONING MATTER BY THE CITY COUNCIL JOINTLY WITH A PUBLIC HEARING REQUIRED TO BE HELD BY THE TOWN PLANNING AND ZONING COMMISSION ON DECEMBER 11, 2003; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 211.007(b) of the Texas Local Government Code provides that the governing body of a municipality may not hold a public hearing regarding a zoning matter until it receives the final report of the zoning commission of the municipality, unless the governing body by ordinance provides for a public hearing to be held, after notice in accordance with law, jointly with a public hearing required to be held by the zoning commission; and

**WHEREAS**, the City Council of the Town of Addison, Texas desires to provide for the holding on December 11, 2003 of a joint public hearing on a zoning matter by the City Council and the City's Planning and Zoning Commission. Now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. A joint public hearing of the City Council of the Town of Addison, Texas (the "City") and the City Planning and Zoning Commission is to be held on December 11, 2003 to consider a zoning matter, namely to consider amendments to the concept plan for the residential subdistrict and approval of final development plans, with waivers, and conditions, for a 183-unit town home/condominium development zoned UC (Urban Center) District and located on approximately 9.732 acres north of Morris Avenue, east of Quorum Drive, south of Airport Parkway and west of the proposed Spectrum Drive (and in that area of the City generally known as Addison Circle). The joint public hearing shall be held at a time and location as determined by the City Manager, and notice of the joint public hearing shall be given in accordance with law.

Section 2. This Ordinance shall take effect from and after its passage.



**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this  
the \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
R. Scott Wheeler, Mayor

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney